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March 16, 2015

Via Certified Mail - Return Receipt Requested

Paula Dinerstein, Esq.  
Public Employees for Environmental Responsibility  
2000 P Street NW, Suite 240  
Washington, DC 20036  
pdinerstein@peer.org

Charles Avrith  
Nagler and Associates  
2300 S. Sepulveda Blvd.  
Los Angeles, CA 90064  
cavrith@nagler.com

Re: Request for Information Regarding Lab Testing

Dear Ms. Dinerstein and Mr. Avrith:

I write as counsel for the Santa Monica-Malibu Unified School District ("District"), regarding the Notice of Intent to File Suit under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, dated January 12, 2015 (hereinafter "January Notice to Sue"), which was sent by your clients, Public Employees for Environmental Responsibility ("PEER") and America Unites for Kids ("America Unites"), to the District, the Attorney General of the United States, and the U.S. Environmental Protection Agency, Region IX (collectively referred to as "EPA"). A copy of the January Notice to Sue is attached hereto as Attachment A.

As you are aware, the District is conducting an ongoing PCB-Related Building Materials Inspection, Management and Removal Program at the Malibu High School and Juan Cabrillo Elementary School (collectively, "Malibu Campus"), with oversight by EPA. EPA has been involved in overseeing the PCB building materials investigation efforts at the Malibu Campus since Fall 2013, and has exclusive jurisdiction to enforce TSCA. 15 U.S.C. § 2601(c). Additionally, as you are aware, the District has committed to removal of building materials at the Malibu Campus

which have been identified and verified to contain PCBs at concentrations above 50 parts per million (“ppm”), again under oversight by EPA.

The January Notice to Sue sent by PEER and America Unites alleges violation of TSCA at the Malibu Campus. Specifically, the Notice to Sue alleges the following violations:

- window caulking from Room 19 on the Juan Cabrillo campus contained 340,000 ppm of PCBs
- interior door caulking from Room 506 on the Malibu Middle and High School campus contained 370,000 ppm 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 ppm of PCBs
- 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.
- Room 401 in the Leopard Shark Building had 146,000 ppm PCBs in the caulk in the interior of an office window
- Room 505 in the Angel Shark Building had 231,000 ppm PCBs in the caulk of an interior door frame
- Room 205 in the Mako Shark Building had 200 ppm PCBs in the caulk of an interior door frame
- Room 7 in Building E had 190 ppm PCBs in the caulk in the interior of a window frame
- air duct cleaning caulk had 58 ppm of PCBs
- 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 Room 22 had 74,000 ppm PCBs in interior window caulk
- Juan Cabrillo Room 18 had 110,000 ppm in PCBs in interior window caulk
- a Juan Cabrillo office had 710 ppm PCBs in interior window caulk
- Juan Cabrillo Room 23 had 85,000 ppm PCBs in interior window caulk

The first four violations memorialized above were also the subject of a Notice of Intent to File Suit sent by your clients to the District and dated August 19, 2014 (hereinafter “August Notice to Sue”). In response to the August Notice to Sue and a PEER press release containing additional sampling data on September 23, 2014, the District sent written requests for supplemental information to your clients on both September 22 and September 24, 2014. Copies of these letters are attached hereto as Attachments B and C, respectively.

Because the sparse information contained in the August Notice to Sue was insufficient to permit the District to investigate, assess, and verify the alleged violations, the District requested, pursuant to the pre-suit notice requirements of TSCA, adequate information for the District to remedy the alleged violations, including, but not limited to, specific information regarding the locations at which the samples were taken, the sampling methodology, and a complete chain of custody for the samples.

On October 10, 2014, your clients responded to the District's written requests. That response also lacked sufficient information for the District to investigate, verify, and assess the additional alleged violations. A copy of the October 10 response letter is attached hereto as Attachment D. Given the limited information and lack of specific descriptions in the August Notice to Sue and the October 10 response letter, the District and its environmental contractor were not able to undertake additional investigation and verification of the allegations contained in the August Notice to Sue.<sup>1</sup>

As you are aware, the District has conducted extensive sampling at Malibu Middle and High School and Juan Cabrillo Elementary School, with the majority of sampling returning non-detects for PCBs. Upon receiving the January Notice to Sue, despite the very limited information contained therein with respect to the alleged violations, the District and its environmental contractor made a good faith effort to attempt to determine the sampling locations from which the samples allegedly in violation of TSCA were taken. The District's environmental contractor investigated potential sampling locations for all alleged violations other than those which also appeared in the August Notice to Sue; as discussed above, the District has been unable to conduct additional investigation and verification of those allegations based on the information provided by PEER and America Unites, and the January Notice to Sue provided no new information with respect to those allegations.

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<sup>1</sup> As discussed in earlier correspondence, in addition to lacking sufficient information to determine the location and/or constituents of the alleged dirt samples from Rooms 1, 2, and 5 in Building E, the August Notice to Sue did not explain which screening level was used. The PCB levels in the samples allegedly taken were all well below the TSCA threshold of 50 ppm. In addition, Room 506 is currently included in EPA's approved remediation plan and therefore further evaluation of this room is unnecessary, even if the District were to receive additional information regarding sampling locations in Room 506.

In attempting to determine the locations from which the samples allegedly in violation of TSCA were taken, the District's environmental contractor was only able to identify two sampling locations—in Room 401 of the Leopard Shark Building and Room 505 of the Angel Shark Building—with any reasonable degree of certainty. In surveying the other sampling locations described in the January Notice to Sue, the District's environmental contractor found:

- No apparent evidence of any tool-removed caulk on the interior door frame of Room 205 in the Mako Shark Building, the area which was reportedly sampled.
- Caulk and foam gasket missing from four interior window frames of Room 7 in Building E, making it impossible to determine which, if any, window the sample was taken from.
- No apparent evidence of caulk removal—caulk was intact except for a scratch—on the hallway door frame in Malibu Middle and High School Room 704, the area which was reportedly sampled. In addition, caulk appeared to be missing from five interior surfaces of interior- and exterior-facing window frames in Room 704 (one of three physical education faculty offices in Malibu High School's Building J-Old Gymnasium) while missing caulk was not identified on the interior side of windows in two other physical education faculty offices (Rooms 705 and 722), making it impossible to determine which, if any, of the windows a sample may have been taken from.
- Six interior window frames missing caulk in Malibu Middle and High School Room 3 in Building E, making it impossible to determine which, if any, of the windows a sample may have been taken from. Additionally, there was no apparent evidence of caulk removal on either the door or the sink in Room 3. The January Notice to Sue did not specify where the caulk allegedly in violation was taken from.
- Five interior window frames missing caulk in Juan Cabrillo Room 22, making it impossible to determine which, if any, of the windows a sample may have been taken from.
- Three interior window frames missing caulk in Juan Cabrillo Room 18, making it impossible to determine which, if any, of the windows a sample may have been taken from.
- Two interior window frames missing caulk and two with repair caulking in Juan Cabrillo Room 23, making it impossible to determine which, if any, of the windows a sample may have been taken from.
- Two interior window frames missing caulk and two with repair caulking in Juan Cabrillo Room 19, making it impossible to determine which, if any, of the windows a sample may have been taken from.

In addition, the environmental contractor could not determine the location of the “Juan Cabrillo office” cited in the January Notice to Sue as there are several offices in on the Juan Cabrillo campus, and could not determine the location at the Malibu Campus from which the sample allegedly taken from a trash bag labeled “air duct cleaning” was originally derived.

Even though the District’s environmental contractor could not positively identify the alleged sampling locations, the District, in an effort to attempt to verify alleged TSCA violations, elected to proceed with verification sampling for examples of the locations from which caulk was missing. This sampling resulted in detections of PCBs above 50 ppm in the classrooms listed in the January Notice to Sue—which, pursuant to EPA’s October 2014 approval, will be scheduled for removal—but the levels at which PCBs were detected did not typically match the data provided in the January Notice to Sue.

Therefore, while the District will abate the caulk exceeding 50 ppm pursuant to EPA’s approval, the District remains uncertain that the locations it sampled and are subject to removal are those referenced in the January Notice to Sue. To permit the District to address the allegations in the January Notice to Sue, as required by TSCA, the District requests more specific information with respect to the additional sampling data collected by PEER and America Unites referenced in the January Notice to Sue, as enumerated below.

TSCA’s pre-suit notification requirement is a jurisdictional prerequisite to a citizen suit under TSCA, and its purpose is to allow a non-adversarial period during which the alleged violator is provided the opportunity to return to compliance. In addition, the pre-suit notification requirement permits EPA the opportunity to investigate potential violations, thus obviating the need for a citizen suit.

The lack of specificity regarding the circumstances under which your clients’ samples were collected and locations from which they were collected has made it impossible for the District to investigate and verify your allegations with reasonable specificity. Without specific descriptions of the locations from which the samples were taken, the District cannot proceed with any further investigation. We would assume that, in keeping with proper scientific sampling protocol, PEER and/or America Unites have kept a detailed record of the specific locations from which samples were collected, as well as the exact time, date, and circumstances of their collection.

Accordingly, in order to permit the District to evaluate, assess and verify these additional sampling results, please provide the following information no later than March 31, 2015:

1. The date and time the samples were collected;
2. The school, building, and placarded room number where the samples were collected;
3. The location within each room at the Malibu Campus where the samples were taken (for example, "frame of door to hallway, on classroom side" or "caulk from second-to-leftmost window frame");
4. The party who collected the samples;
5. A complete chain of custody of the samples from that time that they were collected to when they were received by laboratory and how they were stored from the time of collection until time of laboratory analysis;
6. The methodology used to collect such samples;
7. Any photos and/or field notes taken at the time that the samples were collected;
8. Any third party data validation report.

The requested information should be provided to both the District and EPA. Please direct the requested information to the following persons:

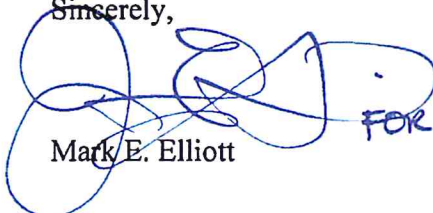
Steve Armann  
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Please contact me with any questions.

Sincerely,



Mark E. Elliott FOR

Encl

cc: U.S. Environmental Protection Agency  
U.S. Environmental Protection Agency, Region IX