

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

_____)	
In the Matter of:)	
)	
The University of Massachusetts)	
System)	
40 Campus Center Way)	TSCA-01-2012-0036
Amherst, Massachusetts 01003-9244)	
)	
)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
Proceeding under Section 16(a))	
of the Toxic Substances Control)	
Act, 15 U.S.C. § 2615(a))	
_____)	

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency ("EPA"), Region 1, alleges that Respondent, the University of Massachusetts System ("UMASS"), violated Section 15 of the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The violations concern Respondent's recent discovery that window glazing compound in a UMASS building in Amherst, MA, contains PCBs.

2. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment

of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

II. TSCA STATUTORY AND REGULATORY AUTHORITY

4. Section 6(e)(2) of TSCA, 15 U.S.C. § 2605(e)(2), prohibits the manufacture, processing, distribution in commerce, or use of any polychlorinated biphenyl in any manner other than in a totally enclosed manner except as authorized by EPA.

5. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

6. The PCB Regulations, 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

7. The PCB Regulations establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." See 40 C.F.R. § 761.1(a).

8. The PCB Regulations define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.” See 40 C.F.R. § 761.3.

9. The PCB Regulations define “excluded PCB products” in part as “materials which appear at concentrations less than 50 parts per million (“ppm”), including but not limited to: products contaminated with Aroclor or other PCB materials from historic PCB uses.” See 40 C.F.R. § 761.3.

10. Forty C.F.R. § 761.20(a) establishes that “no persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that: (1) an authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Respondent is a five-campus public university system operated by the Board of Trustees of the University of Massachusetts pursuant to Section 1 of chapter 75 of the Massachusetts General Laws.

12. Respondent operates the Lederle Graduate Research Center (LGRC) located at 710-740 North Pleasant Street in Amherst, Massachusetts. The scope of this CAFO is LGRC Tower A (“LGRC A”) and the LGRC Low-rise located at 740 North Pleasant Street in Amherst, Massachusetts. LGRC A and the LGRC Low-rise are collectively referred to as “the Facility.”

13. Respondent is a "person," as that term is defined at 40 C.F.R. § 761.3, and is subject to the prohibitions set forth in TSCA and the PCB Regulations.

14. In March of 2009, a consultant for UMASS performed an environmental site assessment at the LGRC Low-rise in preparation for an electrical upgrade project. As part of the assessment, the consultant collected and analyzed two samples of window glazing compound for PCBs. The analysis revealed that the window glazing compound was contaminated with PCBs at a concentration of 50 parts per million ("ppm") or greater. Subsequent sampling revealed PCB concentrations ranging from 82.2 to 14,000 ppm in window glazing compound found on various types of windows in the LGRC Low-rise and LGRC A. Also, during building inspections, a black glazing sealant was found on some windows on the first floor of the LRGC's library and in the walkway. Samples revealed PCB concentrations of 82.2 and 129 ppm. Window glazing compound and sealant contaminated with PCBs at concentrations equal to or greater than 50 ppm is addressed by this CAFO and is hereinafter collectively referred to as "PCB-contaminated window glazing compound" or "window glazing sealant." Based on this sampling, PCB-contaminated window glazing compound may be present in many window units at the Facility.

15. As noted above, pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB or PCB Item regardless of concentration in any manner other than in a totally enclosed manner within the United States unless authorized under 40 C.F.R. § 761.30 or unless the PCB or PCB Item is excluded from regulation under 40 C.F.R. §§ 761.20(a)(1)-(4).

16. The continued use of the PCB-contaminated window glazing compound is not authorized under any provision of 40 C.F.R. §§ 761.20(a)(1)-(4).

17. The continued use of the PCB-contaminated window glazing compound is not authorized under any provision of 40 C.F.R. § 761.30.

18. Accordingly, based on the unauthorized use of PCB-contaminated window glazing compound, Respondent violated 40 C.F.R. § 761.20(a) and Sections 6 and 15 of TSCA.

19. In September of 2009, EPA published a series of guidance materials pertaining to management of PCB-contaminated caulk throughout the nation's buildings. The guidance materials explain the current state of knowledge regarding PCB-contaminated caulk and set forth best management practices for addressing PCB-contaminated caulk. Complainant has determined that some of the same types of best management practices could apply to PCB-contaminated window glazing compound at the Facility, as interim measures, until Respondent removes the glazing.

20. On July 31, 2009, Respondent submitted an Interim Measure Plan to Complainant to address the PCB-contaminated window glazing compound at the Facility. Based on Complainant's comments, Respondent submitted a revised plan (hereinafter called the "PCB Interim Measures Plan"), which is attached to this CAFO as Attachment 1. If Respondent implements the PCB Interim Measures Plan as described, Complainant deems that there will be no unreasonable risk of PCB exposure to human health or the environment.

21. Under this PCB Interim Measures Plan, Respondent shall:

(a) vacuum and cleanse window units and surrounding surfaces, using a HEPA vacuum and a standard industrial cleaning fluid, and treat all cleaning material and vacuum debris as PCB wastes (Section 4.2);

(b) encapsulate the PCB-contaminated window glazing compound by applying an

overlying barrier system to it (currently envisioned to include aluminum foil tape and silicone caulking) (Section 4.3);

(c) conduct visual inspections and wipe sampling to confirm the effectiveness of the encapsulation and establish the baseline for long-term monitoring (Section 4.4);

(d) record a deed notice (Section 4.6);

(e) perform annual long-term monitoring of the windows, which will include visual inspections, collecting wipe samples from window ledges and encapsulated surfaces, and collecting air monitoring samples (Sections 5.1 and 5.2);

(f) take corrective measures at least annually to address any PCBs that exceed levels prescribed in the PCB Interim Measures Plan (Section 5.3);

(g) provide general awareness training to staff (Section 5.5);

(h) submit an annual report to EPA and post the annual report on the UMASS web site (Section 5.6);

(i) remove and replace all windows and PCB-contaminated window glazing compound, within 15 years of the effective date of this CAFO as portions of the Facility are renovated, starting with the removal of some windows on Floors 3,7, and 8 of the LGRC A by December 31, 2012. Respondent shall treat PCB-contaminated window glazing compound as PCB Bulk Product Waste. The remaining window components (glass, non-porous frames, etc.), will either be treated as PCB Bulk Product Waste or decontaminated in accordance 40 C.F.R. § 761.79 (Sections 6.1 and 6.2);

(j) Submit to EPA a notice thirty (30) days before commencing any window removal and replacement at the Facility.

**COMMITMENT & INTEGRITY
DRIVE RESULTS**

35 New England Business Ctr. T 866.702.6371
Suite 180 T 978.557.6150
Andover, Massachusetts 01810 F 978.557.7948
www.woodardcurran.com

MEMORANDUM

TO: Kimberly Tisa
FROM: Jeff Hamel
DATE: July 10, 2009
RE: Status Update – Interior Window Glazing
UMass Amherst – Lederle Graduate Research Center



The following is a brief status update on the interior window glazing project at the Lederle Graduate Research Center (LGRC) on the UMass Amherst campus. UMass became aware of PCBs in the window glazing from a hazardous material assessment being performed as part of an upcoming electrical upgrade project to be conducted within the buildings. This report was issued on March 25, 2009 and included only one sample of the glazing for PCBs. Since that time a number of activities have been and continue to be conducted, as summarized below.

INSPECTIONS/SAMPLING

April 6 and 16-17, 2009 - site inspections were conducted by UMass and W&C personnel to visually inspect interior windows/glazing in the low-rise and Tower A of the LGRC. A sampling plan was developed to collect representative samples of the glazing to confirm the initial results and an inventory of the windows completed.

April 20-21, 2009 - 12 samples of glazing and interior replacement caulking were collected and analyzed for PCBs. Results of the glazing ranged from 4,040 to 14,000 ppm. A summary table of the results is provided in Attachment 1.

May 5, 2009 - additional samples collected in support of the development of options to address this condition. Six samples were collected and consisted of surface wipe samples from the glazing/window frame (pre and post cleaning), surface wipe samples of the adjacent window ledge (pre and post cleaning), and bulk samples of accumulated particulate matter adjacent to the windows and exterior window glazing. A summary of the results is provided in Attachment 2.

May 26, 2009 - 11 indoor air samples were collected from the low-rise and Tower A following EPA Method TO-10A procedures. Concentrations were decreased from those detected in July 2008 and ranged from 0.033 ug/m³ to 0.16 ug/m³. A summary of the results is provided in Attachment 3.

June 5, 2009 – As a follow-up to the May 27, 2009 Informational Meeting (see below), four wipe samples were collected for PCB analysis from window ledges in select rooms of the low rise building. A summary of the results is provided in Attachment 4.

PUBLIC NOTIFICATIONS/OUTREACH

May 15, 2009 - UMass sent/posted a notice to all GRC occupants and other interested parties describing the findings known to date regarding this issue.

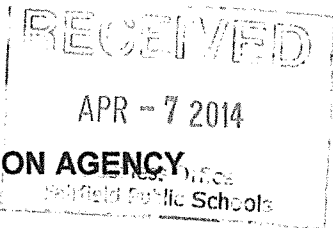
May 15, 2009 - Summary memorandum prepared documenting the April and May 2009 sample results as well as presenting all interior surface wipe and indoor air sample results collected within the building during the exterior abatement project (including post-abatement sample results). Memorandum posted to UMass EH&S project web-site.

May 27, 2009 - Informational Meeting held on campus for all GRC occupants and interested parties. Findings and next steps discussed.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

APR 03 2014

Mr. Tom Cullen
Fairfield Board of Education
501 Kings Highway East
Fairfield, Connecticut 06825

Re: PCB Cleanup and Risk-Based Disposal Approval under 40 CFR §§ 761.61(a) and (c)
and § 761.79(h)
Osborn Hill Elementary School
Fairfield, Connecticut

Dear Mr. Cullen:

This is in response to the Notification¹ by the Town of Fairfield (“the Town”) for the Board of Education for approval of a cleanup and risk-based disposal plan to address PCB contamination at the Osborne Hill Elementary School (“the Site”) located at 760 Stillson Avenue in Fairfield, Connecticut. The Site contains PCB-contaminated materials that exceed the allowable PCB levels under 40 CFR § 761.20(a), § 761.61, and § 761.62.

The Town has proposed a PCB abatement plan under 40 CFR §§ 761.61(a) and (c), § 761.79(h), and § 761.62 that includes the following activities:

A. Gymnasium and Hallway

- Remove caulk with greater than or equal to (“≥”) 50 parts per million (“ppm”) in the gymnasium, associated *non-porous surfaces* (i.e., doors frames), and adjacent *porous surfaces* (i.e., concrete masonry units (“CMU”)) to a minimum 12-inch distance from the caulk) and dispose as a *PCB bulk product waste* in accordance with § 761.62;
- Remove paint from CMU (gymnasium and hallway) and dispose as a *PCB bulk product waste* in accordance with § 761.62;

¹ Information was submitted by AMC Environmental, LLC on behalf of the Town to support a PCB cleanup and risk-based disposal approach for *PCB remediation waste* under 40 CFR §§ 761.61(a) and (c) and § 761.79(h) and disposal of *PCB bulk product waste* under § 761.62. Attachment 2 is the Administrative Record which provides a list of supporting information for the PCB cleanup and disposal request. The Administrative Record will be referred to as the “Notification”.

- Remove and dispose of miscellaneous materials in the gymnasium, including but not limited to gym crash pads, office equipment and furniture, HVAC equipment and sports equipment, as a ≥ 50 ppm *PCB remediation waste* in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii);
- Remove gymnasium ceiling, including steel truss and tectum decking, and dispose as a *PCB bulk product waste* in accordance with 40 CFR § 761.62;
- Remove cove base and adhesive (gymnasium and hallway), floor-tile and adhesive (gymnasium office) and acoustical panel insulation (gymnasium) and dispose as a *PCB bulk product waste* in accordance with 40 CFR § 761.62;
- Remove PCB-contaminated fire proofing from the steel i-beams to achieve a less than or equal to (" \leq ") 10 $\mu\text{g}/100 \text{ cm}^2$ PCB cleanup standard;
- Decontaminate metal ceiling to achieve a $\leq 10 \mu\text{g}/100 \text{ cm}^2$ PCB cleanup standard;
- Remove gymnasium flooring system and a minimum 1.25 inches of concrete floor and dispose as a *PCB bulk product waste* in accordance with 40 CFR § 761.62;
- Remove interim concrete skim coat and stone flooring in the hallway and dispose as a *PCB bulk product waste* in accordance with 40 CFR § 761.62;
- Conduct verification sampling of *porous surfaces* (e.g., brick, CMU, and concrete floor) to determine if PCB concentrations are ≤ 1 ppm without further restriction or less than (" $<$ ") 50 ppm for encapsulation;
- Encapsulate PCB *porous surfaces* in gymnasium (i.e., CMU, concrete columns, and concrete floor) and hallway (e.g., CMU and concrete floor) with PCB concentrations greater than (" $>$ ") 1 ppm but < 50 ppm with an epoxy-based coating or other equivalent barrier (e.g., new floor); and,
- Record a deed restriction to document that PCBs at > 1 ppm remain at the Site.

B. Classrooms, Hallway Window outside Gym, and 1997 addition

- Remove PCB caulk, associated *non-porous surfaces* (e.g., window/door units, etc), and adjacent *porous surfaces* (i.e., concrete, CMU, brick, and mortar) in classrooms and hallway window and dispose as a *PCB bulk product waste* in accordance with § 761.62;
- Remove window caulk in 1997 addition (Rooms 107, 108, Media Center, and Special Education) and dispose as < 50 ppm *PCB remediation waste* in accordance with § 761.61(a)(5)(i)(B)(2)(ii);
- Leave in-place less than (" $<$ ") 50 ppm-PCB-contaminated expansion joint caulk which was previously encapsulated as part of the 2012 interim measures; and,

- Conduct verification sampling of CMU, brick, and mortar to confirm that the PCB cleanup standard of ≤ 1 ppm has been met.

C. Soil and Asphalt

- Remove PCB-contaminated soil and asphalt with > 1 ppm but < 50 ppm;
- Conduct verification sampling in accordance with 40 CFR Part 761, Subpart O to confirm that a PCB cleanup standard of ≤ 1 ppm has been met; and,
- Dispose of all soil and asphalt as a < 50 ppm *PCB remediation waste* at a state-permitted non-hazardous waste landfill in accordance with § 761.61(a)(5)(i)(B)(2)(ii).

Details on PCB waste to be generated under the Notification and disposal information are included in Attachments 3 and 4.

The Town has determined that certain building materials (e.g., gymnasium roof flashing, window/door caulk in the 1959 addition, and paint) which have PCB concentrations < 50 ppm, are *Excluded PCB Products* as defined under 40 CFR § 761.3. Under the PCB regulations, *Excluded PCB Products* are authorized for use and thus there is no requirement to remove these building materials or to decontaminate surfaces that are in contact with these building materials. As indicated in the Notification, the Town is proposing to manage these products under the Connecticut Department of Energy and Environmental Protection (CTDEEP) requirements.

With the exception of the verification sampling requirements under 40 CFR § 761.61(a)(6) and the encapsulation of PCB-contaminated *porous surfaces*, the proposed plan is consistent with the requirements for removal/disposal of *PCB bulk product waste* under § 761.62 and for cleanup and disposal of *PCB remediation waste* under § 761.61. Based on the data to date, and the proposed abatement plan, the alternative sampling plan is reasonable for the purpose of determining if the PCB cleanup standards have been met and if encapsulation is necessary. The proposed encapsulation of PCB-contaminated *porous surfaces* should effectively prevent direct exposure of the PCB-contaminated *porous surfaces* to building users provided the physical barriers are maintained.

Based on EPA's review of the information provided, the proposed PCB cleanup and disposal work is acceptable and will create no unreasonable risk of injury to human health or the environment when conducted in accordance with the Notification and this Approval and the conditions of Attachment 1. EPA applies this reasonable risk standard in accordance with the PCB regulations at 40 CFR §761.61(c), and the Toxic Substances Control Act, at 15 USC § 2605(e).

The Town may proceed with its project in accordance with 40 CFR §§ 761.61(a) and (c); § 761.79(h); § 761.62; its Notification; and, this Approval, subject to the conditions of Attachment 1. Under this Approval, EPA is reserving its rights to require additional investigation or mitigation measures should EPA determine that the encapsulation is not effective in eliminating exposure to PCBs.

With respect to the < 50 ppm PCB-contaminated expansion joint caulk, the Town is proposing to leave this caulk in-place under long-term monitoring and maintenance. Please be aware that in the event the Town determines this caulk is not a *PCB remediation waste* as defined under 40 CFR § 761.3, CTDEEP may require that the expansion joint caulk be removed and disposed of. If so, notification to EPA may be required (see Attachment 1 Condition 24).

Please be aware that this Approval requires the Town to post this Approval on the school's website within 3 days of receipt (see Attachment 1, Condition 11). EPA also expects the Town to continue its outreach to school users as well as to other interested stakeholders. This Approval requires that the school's monitoring plan include a community outreach component (see Attachment 1, Condition 28).

This Approval may be revoked, suspended and/or modified as described in Attachment 1 if the EPA determines that implementation of this Approval may present an unreasonable risk of injury to health or the environment. Nothing in this Approval is intended or is to be construed to prejudice any right or remedy concerning PCBs or other federally-regulated contaminants at the Site otherwise available to the EPA under Section 6 of TSCA, 15 U.S.C. 2605, 40 CFR Part 761, or other provisions of federal law.

Questions and correspondence regarding this Approval should be directed to:

Kimberly N. Tisa, PCB Coordinator (OSRR07-2)
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1527 / Facsimile: (617) 918-0527

EPA shall not consider this project complete until it has received all submittals required under this Approval. Please be aware that upon EPA receipt and review of the submittals, EPA may request any additional information necessary to establish that the work has been conducted and completed in accordance with 40 CFR Part 761, the Notification, and this Approval.

Sincerely,



James T. Owens, III
Director, Office of Site Remediation & Restoration

- Attachment 1: PCB Approval Conditions
- Attachment 2: Administrative Record
- Attachment 3: Waste Classification Table – Gymnasium/Hallway
- Attachment 4: Waste Classification Table - Windows

cc: Jason Pringle, AMC Environmental
Sal Morabito, Town of Fairfield
Gary Trombly, CTDEEP
Brian Toal, CTDPH

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
AUG 12 2014
EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
Fairfield School District)
Fairfield, Connecticut)
)
Respondent)
)
)
Proceeding under Section 16(a))
of the Toxic Substances Control)
Act, 15 U.S.C. § 2615(a))
)

TSCA-01-2014-0046

**CONSENT AGREEMENT
AND FINAL ORDER**

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency (“EPA”), Region 1, alleges that Respondent, Fairfield School District (“Fairfield”), violated Section 15 of the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2614, and the federal regulations entitled, “Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions” (the “PCB Regulations”), 40 C.F.R. Part 761. The violations concern PCB-containing materials in use in the Riverfield Elementary School building located at 1625 Mill Plain Road in Fairfield, Connecticut.

2. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment

of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

II. TSCA STATUTORY AND REGULATORY AUTHORITY

4. Section 6(e)(2) of TSCA, 15 U.S.C. § 2605(e)(2), prohibits the manufacture, processing, distribution in commerce, or use of any polychlorinated biphenyl in any manner other than in a totally enclosed manner except as authorized by EPA.

5. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

6. The PCB Regulations, 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

7. The PCB Regulations establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." See 40 C.F.R. § 761.1(a).

8. The PCB Regulations define "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances

which contain such substance.” See 40 C.F.R. § 761.3.

9. The PCB Regulations define “excluded PCB products” in part as “materials which appear at concentrations less than 50 parts per million (“ppm”), including but not limited to: products contaminated with Aroclor or other PCB materials from historic PCB uses.” See 40 C.F.R. § 761.3.

10. Forty C.F.R. § 761.20(a) establishes that “no persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that: (1) an authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3.”

11. Forty C.F.R. § 761.50 requires that any person storing or disposing of PCB waste must do so in accordance with Subpart D of the PCB Regulations. Forty C.F.R. §§ 761.61 and 761.62 are part of Subpart D of the PCB Regulations.

12. Forty C.F.R. §§ 761.61 and 761.62 regulate the proper disposal of PCB remediation waste and PCB bulk product waste, respectively, as those terms are defined at 40 C.F.R. § 761.3.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Respondent operates the Riverfield Elementary School.

14. Respondent is a “person,” as that term is defined at 40 C.F.R. § 761.3, and is subject to the prohibitions set forth in TSCA and the PCB Regulations.

15. Fairfield proposes a renovation of existing school buildings that will primarily consist of interior renovations (window and door replacement, reconfiguration of interior spaces, and

replacement of select flooring systems), and will include an addition. As part of the preparation for the interior renovation work, Fairfield conducted a hazardous materials survey and sampling program.

16. The hazardous materials survey included the collection and analysis for PCBs of various samples. PCBs at below 50 ppm, and at or above 50 ppm, were detected in a variety of building materials in the Riverfield School gymnasium (hereinafter referred to as the "Facility"), including interior and exterior door caulk, expansion joint caulk, and exterior/interior wall waterproofing felt.

17. As noted above, pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB or PCB Item regardless of concentration in any manner other than in a totally enclosed manner within the United States unless authorized under 40 C.F.R. § 761.30 or unless the PCB or PCB Item is excluded from regulation under 40 C.F.R. §§ 761.20(a)(1)-(4).

18. The continued use of the PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt is not authorized under any provision of 40 C.F.R. §§ 761.20(a)(1)-(4).

19. The continued use of the PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt is not authorized under any provision of 40 C.F.R. § 761.30.

20. Accordingly, based on the unauthorized use of PCBs described above, Respondent is in violation of 40 C.F.R. § 761.20(a) and Sections 6 and 15 of TSCA.

21. Respondent has not properly disposed of PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt at the Facility. Accordingly, Respondent is in violation of 40 C.F.R. §§761.50, 761.61, and 761.62.

22. The Town has submitted a PCB remediation plan dated January 2014 that includes removal of PCB caulk, certain building substrates, and certain waterproofing felt at or above 50 ppm; encapsulation of building substrates with PCBs above 1 ppm; and, in-place interim management of waterproofing felt which contains PCBs at or above 50 ppm until the walls containing the substrates and/or the waterproofing felt are demolished or otherwise disturbed as part of the planned renovation activities.

23. The walls containing PCB-contaminated substrates and/or waterproofing felt have exterior bricks that interlock with interior concrete blocks, forming a composite wall assembly. The composite wall assemblies also brace existing steel tube columns embedded within the walls. As such, removal of masonry wall materials along expansion joints or door joints could impact the structural integrity of the walls.

24. Waterproofing felt located between the interlocked bricks and concrete blocks cannot be removed without removal of the entire wall. Therefore, complete demolition and reconstruction of the gymnasium would be required to remove the waterproofing felt in its entirety.

IV. GENERAL TERMS OF SETTLEMENT

25. The provisions of this CAFO shall apply to and be binding on Respondent and its officers, directors, successors and assigns until Respondent has completed all of the obligations required by this CAFO.

26. Respondent stipulates that Complainant has jurisdiction over the subject matter alleged in this CAFO. For purposes of this CAFO, including any further action to enforce the terms of this CAFO, Respondent waives any defenses it might have as to jurisdiction and venue.