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June 22, 2009

Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC 20004

Dear Administrator Jackson:

I am writing to you on a matter of utmost concern and importance to the citizens of the Bronx and all of New York City – the recent discovery of PCB contamination in New York City school buildings and the very serious threat this contamination poses to the health of our children and school staff. While the discovery of this threat has upset and unnerved parents and government officials all over the City, what has been just as upsetting and unnerving is the refusal of the New York City Department of Education (NYCDOE) to forthrightly acknowledge and take action to remove this threat coupled with the ongoing failure of the U.S. Environmental Protection Agency (EPA) to enforce regulations that require the removal of PCB contamination from the schools. Consequently, I most respectfully urge you to instruct EPA Region 2 officials to enforce the Toxic Substances Control Act (TSCA)¹, which requires the removal of PCB contamination from New York City schools. I also ask your support for the passage and enactment of legislation such as House Bill 2187² which provides federal financial support for such removal.

As you are aware, the impact of poly-chlorinated biphenyls (PCBs) on health is very destructive. PCBs have been found to be a potent, persistent, bio-accumulating toxin linked to

¹ 15 USC 2601, *et seq.*

² H.R. 2187 was passed on May 18, 2009 by the U.S. House of Representatives and sent to the U.S. Senate Committee on Health, Education, Labor and Pensions immediately thereafter.

cancer and damage of the reproductive, neurological, endocrine and immune systems. Moreover, the risks associated with PCB exposure are far more severe for children compared to that of adults. Exposure to PCBs can also cause a permanent and irreversible reduction in IQ, shortened attention span and an increase in disruptive behavior in children, effects that are the antithesis to a productive school environment.³ The extreme toxicity of PCBs led Congress to permanently ban their manufacture and use in 1978 in the TSCA. After the enactment of the TSCA, the EPA adopted regulations which require the removal of PCBs that are used in any manner "other than in a totally enclosed manner" which effectively requires the immediate removal of PCB-contaminated window caulking and other building materials such as expansion joints and paint.⁴

Despite the ban, PCBs continue to pose health risks because they persist in pre-ban construction and industrial materials and waste. For example, beginning in the mid-1950's and up until the 1978 ban, PCBs were commonly added to window and door caulking to make it more elastic. Beginning in the 1990's, scientific studies began to identify PCBs in caulk as a previously unrecognized and significant source of risk to human health.⁵ PCB-laced caulking, over time, can emit vapors and crumble into dust particles that can contaminate the air and ventilation systems and inadvertently be picked up and ingested by children. PCB-contaminated caulking can also leach into adjacent materials such as brick and mortar and soil posing a very serious health threat to children and school workers.

In April of last year, the New York Daily News published a series of articles which described tests they conducted on window caulking in nine New York City public schools. The tests, conducted at a state certified laboratory, established that caulking at six of the nine schools contained dangerous levels of PCBs.⁶ One of the test samples contained PCBs in a concentration greater than 100,000 parts per million, 2,000 times what the EPA categorizes as an unreasonable health risk. Since the initial Daily News expose, it has been reported that NYCDOE has found PCB contamination in window caulking in 19 additional schools during the

³ See Faroon O, Jones D and DeRosa C: *Effects of Polychlorinated Biphenyls on the Nervous System. Toxicol Ind Health* 16: 305-333: 2000; Lai TJ, Guo I, Guo NW and Hsu CC: *Effect of Prenatal Exposure to Polychlorinated Biphenyls on Cognitive Development in Children. Br J Psychiatry* 178 (Suppl 40): s49-s52: 2001; Carpenter DO, *Polychlorinated Biphenyls (PCBs): Routes of Exposure and Effects on Human Health. Rev Environ Health* 21: 1-23: 2006.

⁴ See 40 CFR 5. 761.20

⁵ See Burkhardt U, Bork M, Balfanz E, Leidel J. *Indoor air pollution by polychlorinated biphenyl compounds in permanently elastic sealants. 1990. Offentl Gesundheitweis* 52, 10: 567-574; Balfanz E, Fuchs J, Kieper H. 1993. *Sampling and analysis of polychlorinated biphenyls (PCB) in indoor air due to permanently elastic sealants. Chemosphere* 26, 5: 871-880; Herrick RF, McClean MD, Meeker JD, Baxter LK, Weymouth, GA. 2004. *An unrecognized source of PCB contamination in schools and other buildings. Environ Health Perspect.* 112:1051-1053.

⁶ See attached New York Daily News articles.

course of window replacement projects and PCB contamination in soil adjacent to contaminated window caulking at 20 schools.⁷ This widespread PCB contamination in New York City schools stems from the fact that at least 260 City schools, including more than 50 schools in the Bronx, were constructed during the time period (the mid-1950's through 1979) that PCBs were widely used in caulking. In addition, there are an unknown number of New York City schools constructed prior to the 1950's that may have PCB contamination associated with window replacements made during the period PCBs were added to caulking.

Despite this discovery of widespread PCB contamination in New York City schools and despite the pleadings of concerned parents, school workers and public officials, NYCDOE has steadfastly refused to conduct a systematic testing of all of its schools for PCB contamination in window and door caulking to determine the extent of the problem and which schools are in need of remediation. NYCDOE has also insisted on leaving known contaminated window caulking in place unless the windows are scheduled for replacement. In the face of all scientific evidence to the contrary and despite EPA regulations requiring immediate removal, NYCDOE insists that intact PCB-contaminated caulking poses no threat to the children and workers in the schools.

Equally frustrating has been the failure of the EPA to enforce its own regulations requiring the immediate removal of this type of PCB contamination.⁸ Upon learning of this problem in April, 2008, my office contacted the Region 2 office of the EPA to determine what, if any, actions EPA would be taking to insure removal of the PCB contamination in City schools. At that time, Region 2 officials told us, rather bluntly, that applicable federal regulations on PCB contamination would not be enforced in this situation. In lieu of the EPA enforcing its own regulations, we were told that the City would be required merely to comply with a New York State environmental protocol that mandates the testing for, and removal of, PCB contamination in the event window caulking would be disturbed by a window replacement or building demolition.⁹

In the last month, we have made several requests (to no avail) to talk with the Acting Region 2 Administrator to determine what if any actions the EPA will take to force the City to test for and remediate PCB contamination in the schools. Last week we were told, unofficially, that Region 2 officials were in discussions with NYCDOE regarding PCB contamination in City schools. While this is a welcome development, we urge the EPA to require the City and NYCDOE to take the following actions:

⁷ See attached New York Daily News articles.

⁸ *40 CFR 5761.1 et seq.*

⁹ Protocol for Addressing Polychlorinated Biphenyls (PCBs) in Caulking Materials in School Buildings, New York State Education Department, Facilities Planning, June 2007.

- 1) Develop and implement a plan to test all window and door caulking and other necessary building materials in City school buildings constructed prior to 1980 for PCB contamination within the next two years utilizing testing standards no less strict than applicable EPA standards;
- 2) Make public all testing results no less than 60 days after results are provided to the City;
- 3) At schools where PCB contamination is found, require the City to test for:
 - a. air and particle contamination in the room containing contaminated material;
 - b. PCB contamination in the brick and mortar and soil adjacent to any contaminated materials; and
 - c. PCB contamination in the school's central heating, ventilation and cooling system, if any;
- 4) Adopt remediation procedures that insure the environmental safety of the school during remediation;
- 5) Develop a remediation plan for and remediate any PCB contamination found in a City school within six months of its discovery utilizing applicable EPA cleanup standards;
- 6) Conduct public informational hearings in each Borough of New York City with respect to actions 1 and 4 above; and
- 7) Conduct public pre-remediation informational hearings on test results and remediation plans for each school which tests positive for PCB contamination.

I understand that construction-related PCB contamination is a nationwide problem which extends beyond school buildings and will require significant resources to address for decades to come. I also understand that requiring NYCDOE to take these actions will impose a significant financial burden. However, I am sure you will agree that **there is nothing more important than educating our children and educating them in facilities that ensure their health and safety.** Every day we fail to address this problem exposes our most precious resource, our children, to an unreasonable amount of danger. There is no better time than now to start addressing the serious threat of PCB contamination in school buildings and no better place than the New York City school system.

As a follow up to this letter, we will contact the Region 2 office to discuss what actions the EPA plans for addressing the problem of PCBs in our schools. I am hoping you will instruct

Region 2 officials to discuss this problem with us and to implement the recommendations we have made in this letter.

Thank you in advance for your serious consideration of this matter.

Sincerely,



Ruben Diaz, Jr.

Cc: Adolfo Carrion, Jr., Director, Office of Urban Affairs Policy
George Pavlou, Acting EPA Region 2 Administrator
Eric Schaaf, Counsel, EPA Region 2
Hon. Charles E. Schumer, U.S. Senate
Hon. Kirsten Gillibrand, U.S. Senate
Hon. Edward M. Kennedy, U.S. Senate
Hon. Jose Serrano, U.S. House of Representatives
Hon. Joseph Crowley, U.S. House of Representatives
Hon. Linda B. Rosenthal, NY State Assembly
Hon. Carl Kruger, NY State Senate
Pete Grannis, Commissioner, NY State Dept. of Environmental Conservation
Joel I. Klein, Chancellor, New York City Dept. of Education
Sharon Greenberger, President, New York City School Construction Authority
William C. Thompson, Jr., Comptroller, The City of New York

Attachment: New York Daily News Articles