UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of: Monroe School District No. 103 MONROE, WASHINGTON, Respondent	**NOTICE OF VIOLATION**

I. AUTHORITIES

1. Pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), the U.S. Environmental Protection Agency, Region 10 ("EPA"), through the Director of the Enforcement and Compliance Assurance Division, upon the basis of available information, hereby issues the following Notice of Violation ("NOV") to Monroe School District No. 103, Snohomish County, State of Washington – a first-class district; the School Board at Monroe School District, (collectively, "Respondent"). The NOV alleges violations of the TSCA regulations at the Sky Valley Education Center at 351 Short Columbia Street, Monroe, Washington 98272 and at the Monroe Public School Transportation Office at 1410 W Main Street, Monroe, Washington 98272, both of which are owned and operated by Monroe School District No. 103 (collectively, "Facility").

2. The Administrator of EPA has delegated the authority to issue NOVs to the Regional Administrator, who has further delegated the authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 10.

II. FACTUAL BACKGROUND

3. On May 25, 2016, Respondent submitted a Corrective Action Plan ("CAP") to EPA to address the removal of Polychlorinated Biphenyl ("PCB") impacted building materials, management of PCB remediation waste, and ongoing maintenance and monitoring.

4. On December 1, 2016, Respondent submitted a PCB Abatement Closeout Summary Report to document that removal and encapsulation were complete in October 2016. The encapsulation procedure included applying an epoxy sealant to all areas where the PCB caulk was removed.

5. On April 11, 2017, EPA conducted an inspection and collected wipe samples.

6. On September 15, 2017, Respondent received from EPA a Risk-Based Disposal Approval ("Approval"), pursuant to 15 U.S.C. § 2605(e) and 40 C.F.R. §§ 761.61(c) and 761.62(c), to conduct cleanup and disposal of PCB bulk product waste and PCB remediation waste at the Facility, subject to the conditions in the Approval. In addition, as part of the Approval, EPA approved Respondent's Corrective Action Plan on September 15, 2017.

7. Respondent also submitted a Communication Plan on October 9, 2017, which describes reporting requirements to EPA and PCB training requirements for SVEC.

8. In March 2019, EPA received several tips and complaints that potential sources of PCBs remained at the Facility.

9. In response, on October 24, 2019, EPA conducted a compliance inspection of the Facility. During this inspection, EPA discovered several areas where the epoxy appeared to be deteriorated. Areas where EPA had concerns with the integrity of the encapsulant were sampled for PCBs at the time of the inspection.

10. From October 28 to November 20, 2019, Respondent's contractor, PBS Engineering and Environmental, Inc. ("PBS") performed a Comprehensive Light Fixture Survey

at the Facility where PBS inspected every light fixture on campus, excluding the two Portables east of the Classroom Pod Building.

11. On November 2, 2020, EPA sent a letter to Respondent titled "SVEC Warning Letter October 2020" ("Warning Letter") that stated concerns about deviations from the Approval and recommended that Respondent take several corrective measures pursuant to TSCA.

12. In response, on December 7, 2020, Respondent represented that, in light of EPA's discovery during the 2019 inspection and results from the Comprehensive Light Fixture Survey, Respondent, with the assistance of Clean Harbors, Inc., had properly disposed of the remaining light fixtures presumed or shown to contain PCBs. At this time, Respondent also informed EPA that Respondent had retained NVL Laboratories, Inc. ("NVL") to address the outstanding tasks identified in EPA's Warning Letter. To date, EPA has not received an adequate submittal to satisfy the outstanding compliance issues detailed in the November 2, 2020, warning letter.

13. On March 4, 2022, Respondent submitted to EPA a draft Monitoring and Maintenance Implementation Plan (MMIP) and a draft Quality Assurance Project Plan (QAPP). Respondent's submittals did not constitute an application for a new approval.

14. The Approval expired on May 25, 2022. The Approval stated that if the encapsulated material remained in place at the time of the Approval's expiration date, then Respondent must re-apply for a new approval from EPA. Respondent has not re-applied for a new approval.

15. On September 26 & 27, 2022, EPA conducted an inspection and took samples that revealed PCB concentration levels above risk-based levels, demonstrating that PCBs were still present at levels that require an active approval pursuant to 40 C.F.R. Part 761.

III. STATUTORY AND REGULATORY BACKGROUND

16. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to PCBs. Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates Section 15 of TSCA, 15 U.S.C. § 2614, may be assessed a civil penalty in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

17. Respondent is subject to the requirements of 40 C.F.R. Part 761 that establish prohibitions and requirements for the use, disposal, storage, and marking of PCBs and PCB Items.

18. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

19. The Facility is a "Facility" as defined in 40 C.F.R. § 761.3.

20. The terms "PCB" and "PCBs" are defined in 40 C.F.R. § 761.3, as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance."

21. The term "PCB Item" is defined in 40 C.F.R. § 761.3, as "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs."

22. The term "PCB waste" is defined in 40 C.F.R. § 761.3, as "those PCBs and PCB Items that are subject to the disposal requirements of subpart D" of Part 761.

23. The term "disposal" is defined in 40 C.F.R. § 761.3 as "intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as

well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items."

24. The terms "leak" and "leaking" are defined in 40 C.F.R. § 761.3, as "any instance in which a PCB Article, PCB Container, or PCB Equipment has any PCBs on any portion of its external surface."

25. The term "disposer of PCB waste" is defined in 40 C.F.R. § 761.3 as any person who owns or operates a facility approved by the EPA for the disposal of PCB waste which is regulated for disposal under the requirements of subpart D of this part.

26. The regulation at 40 C.F.R. § 761.50(a) requires any person storing or disposing of PCB waste to do so in accordance with subpart D of Part 761.

IV. VIOLATIONS

Count 1: Failure to Have an Active Approval

27. Respondent is subject to the requirements of 40 C.F.R. Part 761 that establish prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.

28. Under 40 C.F.R. § 761.20(a), "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." The use of PCB bulk product waste is not authorized under 40 C.F.R. § 761.30.

29. The regulation at 40 C.F.R. § 761.20(a)(4) states: "Except as explicitly provided in subpart D of this part, no person may dispose of regulated PCB wastes including, but not limited to, PCB remediation waste, PCB bulk product waste, PCBs, ..."

30. The regulation at 40 C.F.R. 761.50(b)(3) states: "PCB remediation waste is regulated for cleanup and disposal in accordance with § 761.61."

31. The regulation at 40 C.F.R. § 761.50(b)(4) requires that: "Any person disposing of PCB bulk product waste must do so in accordance with § 761.62."

32. The term "PCB remediation waste" is defined in 40 C.F.R. § 761.3 as "waste containing PCBs as a result of a spill, release, or other unauthorized disposal . . . [including] materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part. PCB remediation waste means soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to . . . Buildings and other man-made structures (such as concrete floors, wood floors, or walls contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces."

33. The term "PCB bulk product waste" is defined in 40 C.F.R. § 761.3 as "waste derived from manufactured products containing PCBs in a non-liquid state, at any concentration where the concentration at the time of designation for disposal was ≥50 ppm PCBs. PCB bulk product waste does not include PCBs or PCB Items regulated for disposal under § 761.60(a) through (c), § 761.61, § 761.63, or § 761.64 . . . ."

34. The regulations at 40 C.F.R. §§ 761.61(c)(1) and 761.62(c)(1) require that any person wishing to sample, cleanup, or dispose of or store PCB remediation waste or PCB bulk product waste must apply in writing to the Regional Administrator in the Region where the sampling, cleanup, disposal, or storage site is located, for sampling, cleanup, disposal, or storage occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for sampling, cleanup, disposal, or storage occurring in more than one EPA Region.

Also, no person may conduct cleanup activities under this paragraph prior to obtaining written approval by EPA.

35. The Approval pursuant to 40 C.F.R. §§ 761.61(c) and 761.62(c) allowed Respondent to conduct cleanup and disposal of PCB bulk product waste (i.e., caulk) and PCB remediation waste (i.e., any potential residual PCBs remaining in the encapsulated porous surfaces) at the Facility.

36. In the Approval, EPA found that the inaccessible caulk remaining in place and the encapsulation of the porous surfaces would not pose an unreasonable risk of injury to human health or the environment as long as the maintenance and monitoring demonstrated the encapsulant remained intact and an effective barrier against PCB migration. Thus, the Approval required Respondent "to perform ongoing monitoring of the encapsulated surfaces and indoor air in accordance with the May 25, 2016, Corrective Action Plan until such time that the building is renovated or demolished."

37. The Approval stated, "[t]his approval shall expire on May 25, 2022, after which time, if the encapsulated material still remains in place, SVEC must re-apply for a new approval from the EPA." Respondent has not re-applied for a new approval for the Facility.

38. On September 26 and 27, 2022, EPA conducted a PCB inspection of Respondent's Facility. EPA solid samples taken outside of Room 7 (samples 22404351) and outside of Room 11 (sample 22404353) demonstrate that exposed caulk with more than 50 ppm PCBs are at the facility, which is an unauthorized use of PCBs. Wipe samples taken outside of the Gathering Area (sample 22404359) and outside of Room 7 (sample 22404352) demonstrate PCB remediation waste with PCB concentrations exceeding the action level in the Approval of 10 µg/100 cm^2. Solid samples taken from the Room F Ventilator Filter (sample 22404362), the

Room 11 Carpet (sample 22404364), and the Room 11 Filter (sample 22404365) demonstrate PCB remediation waste exists in the building above the regulatory standard of 1 ppm for unrestricted use. The exceedances of 10 µg/100 cm^2 and 1 mg/kg require an application and written approval by EPA.

39. Failure to obtain an active approval is an ongoing violation of Section 15 of TSCA, 15 U.S.C. § 2614, starting on May 25, 2022, and until such time as Respondent applies for and receives an approval pursuant to 40 C.F.R. §§ 761.61(c) and 761.62(c).

Counts 2-6: Failure to Conduct Minimum Required Annual Wipe Samples

40. Condition 12 of the Approval required Respondent to conduct sampling of epoxy encapsulated surfaces, as described in the CAP, to determine the effectiveness of the encapsulation.

41. In the CAP, Respondent represented that: (1) all Fluorescent Light Fixtures ("FLFs") were to be inspected and cleaned; (2) contaminated FLFs were to be re-tested using a standard wipe test (as defined in 40 C.F.R. § 761.123); (3) PCB caulk containing 50 parts per million ("ppm") or more was to be removed and any residual caulk was to be encapsulated; (4) Respondent would then take representative wipe samples (at a minimum of 25% of the interior spaces where PCB-containing caulk was removed) of the surface of the epoxy encapsulant and four quarterly air samples in any space where PCB caulk was removed; and (5) Respondent would employee housekeeping & best management practices to reduce dust and residue.

42. The Approval required wipe sampling of encapsulated surfaces to be performed on a surface area basis by the standard wipe test as specified in 40 C.F.R. § 761.123 (i.e., µg/100 cm^2). "Standard wipe test" is defined at 40 C.F.R. § 761.123 to mean, "for spills of high-

concentration PCBs on solid surfaces, a cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met."

43. According to Respondent's 2018-2022 annual reports, once each year from 2018 through 2022, Respondent collected 12 interior samples. Respondent collected each of the 12 interior samples via wipe over a maximum 100 square centimeter (cm^2) area. These twelve locations do not meet the required minimum of 25% of interior spaces.

44. Therefore, Respondent failed to sample at least 25% of interior spaces where PCB-containing caulk was removed for the years 2018, 2019, 2020, 2021, and 2022 in violation of the Approval and Section 15 of TSCA, 15 U.S.C. § 2614.

Count 7: Failure to Use Proper Wipe Sampling Method

45. Condition 12 of the Approval required that sampling of epoxy encapsulated surfaces be conducted as described in the CAP. The Approval established 1 µg/100 cm^2 as the minimum laboratory reporting requirement, directing that Respondent conduct chemical extraction for PCBs using Method 3500B/3540C of SQ-846 and conduct chemical analysis for PCBs using Method 8082 of SW-846, unless another extraction or analysis method was validated according to 40 C.F.R. Part 761, Subpart Q.

46. On or about November 12, 2019, Respondent conducted 12 wipe samples of epoxy encapsulated surfaces ("Samples").

47. Respondent sent the Samples to a laboratory for extraction and analysis.

48. The laboratory failed to analyze the samples using Method 8082 of SW-846.

49. The laboratory analyzed the Samples using NIOSH Method 5503.

50. At no time relevant to this NOV was NIOSH method 5503 validated.

51. Therefore, on or around November 12, 2019, Respondent conducted chemical analysis for PCBs using the incorrect extraction or analysis method in violation of Condition 12 of the Approval and Section 15 of TSCA, 15 U.S.C. § 2614.

Count 8: Failure to Properly Dispose of PCBs

52. Between the years of 2011 and 2015, there were reports of a few PCB fluorescent light ballasts ("FLBs") catching fire and dripping PCB oil on to the floor and carpet in a couple of the classrooms at the Facility.

53. In the CAP, Respondent represented that: (1) all older FLBs that could contain PCBs were removed or properly stored for disposal per 40 C.F.R. § 761.65; and (2) all remaining areas of old carpet were to be removed.

54. The regulation at 40 C.F.R. § 761.3 defines "PCB Article" as "any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs."

55. The regulation at 40 C.F.R. § 761.50(a) requires any person storing or disposing of PCB waste to do so in accordance with subpart D of Part 761.

56. The regulation at 40 C.F.R. § 761.50(b)(2) states: "any person removing from use a PCB Item containing an intact and non-leaking PCB Article must dispose of it in accordance with 40 C.F.R. § 761.60(b), or decontaminate it in accordance with 40 C.F.R. § 761.79. . . . Fluorescent light ballasts containing PCBs in the potting material are regulated for disposal as PCB bulk product waste under § 761.62."

57. On October 24, 2019, EPA inspectors observed and sampled two light fixtures in the Administration building, in the storage/IT closet, with spilled potting indicative of the kind used in PCB FLBs. Sample analysis indicated that these two light fixtures contained PCB

concentrations above 10 μg/100 cm^2. PCB items that are leaking or no longer intact are not authorized for use and are regulated for disposal.

58. According to Respondent's December 9, 2019, Comprehensive Light Fixture Survey, between at least October 28 to November 20, 2019, there were at least 62 FLBs at the Facility with signs of past failure. The ballasts had oily and/or smokey residue on the ballast housing indicating that failure occurred and was never appropriately cleaned up. These observations indicate these ballasts were originally PCB ballasts because the presence of an oily and smokey residue is indicative of PCBs.

59. On December 7, 2020, Respondent represented that, in light of EPA's discovery during the 2019 inspection and results from the Comprehensive Light Fixture Survey, Respondent, with the assistance of Clean Harbors, Inc., had properly disposed of the remaining light fixtures presumed or shown to contain PCBs.

60. On or around September 26 & 27, 2022, EPA identified carpet remnants in Room 11 underneath the east wall where the analysis of the Room 11 Carpet (sample 22404364) reported the PCB total concentration at 4.37 mg/kg or parts per million (ppm) that tested positive for PCBs. The sample demonstrates that the carpet is a PCB Article contaminated due to leaking from an FLB containing PCBs.

61. Therefore, on October 24, 2019, and between October 28, 2019, to December 7, 2020, Respondent illegally disposed of 64 FLBs containing PCBs in violation of 40 C.F.R. § 761.50(b)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count 9: Failure to Properly Identify PCB Storage Area

62. On October 24, 2019, EPA inspectors observed the entry door to a storage area containing PCB Items without a Large PCB Mark as required by 40 C.F.R. § 761.65(c)(3).

63. The regulation at 40 C.F.R. § 761.65(c)(3) requires any storage area subject to 40 C.F.R. § 761.65(b) or (c)(1) to be marked as required in 40 C.F.R. § 761.40(a)(10).

64. The regulation at 40 C.F.R. § 761.40(a)(10) requires each storage area used to store PCBs and PCB Items for disposal to be marked as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

65. The regulation at 40 C.F.R. § 761.45(a) requires the size of the Mark M_L to be at least 15.25 cm (6 inches) on each side, with letters and striping on a white or yellow background, and sufficiently durable to equal or exceed the life (including storage for disposal) of the PCB Article, PCB Equipment, or PCB Container.

66. On December 7, 2020, Respondent represented to EPA, in response to the Warning Letter, that Respondent had corrected the signage on the entry door to the storage area.

67. Therefore, from at least October 24, 2019, to December 7, 2020, Respondent failed to mark with a Large PCB Mark the entry door to a storage area containing PCB Items in violation of 40 C.F.R. § 761.65(c)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count 10: Failure to Store PCB Waste in Secondary Containment

68. In the CAP, Respondent represented that all older Fluorescent Light Ballasts ("FLBs") that could contain PCBs were removed or properly stored for disposal per 40 C.F.R. § 761.65.

69. The regulation at 40 C.F.R. § 761.65(b)(1)(ii) requires owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal to comply with storage unit requirements, including an adequate floor that has continuous curbing with a minimum 6-inch high curb and a containment volume equal to at least two times the internal

volume of the largest PCB Article or PCB Container, or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored there, whichever is greater.

70. On October 24, 2019, EPA inspectors observed at least four yellow bags marked as PCB waste stored directly on the floor of the Facility.

71. On December 7, 2020, Respondent represented to EPA, in response to the Warning Letter, that Respondent ensured that all PCB wastes are stored in drums that are situated on skid plates.

72. Therefore, from at least October 24, 2019, to December 7, 2020, Respondent failed to store PCB waste in secondary containment in violation of 40 C.F.R. § 761.65(b)(1)(ii) and Section 15 of TSCA, 15 U.S.C. § 2614.

V. ENFORCEMENT

73. Violations of TSCA may result in a civil administrative or judicial action for an injunction or civil penalties as provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and Section 17(a) of TSCA, 15 U.S.C. § 2616(a), as well as criminal sanctions as provided in Section 16(b) of TSCA, 15 U.S.C. § 2615(b).

74. This NOV does not waive or limit EPA's right to any remedy available to it under TSCA.

75. This NOV shall become effective immediately upon issuance.

Issued this 8th day of February, 2024.

EDWARD KOWALSKI

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Edward J. Kowalski
Director, Enforcement and Compliance Assurance Division