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March 7, 2024

***For Settlement Purposes Only***
***Via Email (Kowalski.Edward@epa.gov)***

Edward J. Kowalski
Director, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

**Re:** ***In the Matter of: Monroe School District No. 103***
***Initial Response to February 8, 2024 Notice of Violation***

Dear Mr. Kowalski:

I am writing on behalf of the Monroe School District (the "**District**") and in response to the Environmental Protection Agency's February 8, 2024 Notice of Violation (the "**NOV**"). I have already reached out to Ms. Rebersak to schedule a meeting between the District and EPA representatives; that meeting is scheduled to take place this Friday, March 8, 2024. I am providing this letter, which sets forth the District's initial responses to the allegations set forth in the NOV, in advance of that meeting in order to facilitate discussions between the parties. Those documents that are cited below as exhibits are available for download at the following link: https://filetransfer.hcmp.com/link/J6I6IU0UqnGseEUmppzkKT.

The District is committed to providing safe and healthy facilities to its students, faculty, and staff. To that end, it continues to work in good faith to address and remedy the legacy PCB issues at the Sky Valley Education Center (the "SVEC"). Following receipt the EPA's November 2, 2020 Warning Letter, the District redoubled those efforts. Among other things, it retained qualified, outside consultants to prepare the necessary plans to ensure that the residual PCB-containing caulk at the SVEC remains encapsulated and does not present a risk to those individuals that spend time within the SVEC. The District is prepared to fully implement those plans as soon as they are approved by the EPA.

The District respects the EPA's role in ensuring that the District's activities comply with the Toxics Substances Control Act, 15 U.S.C. § 2601 *et seq.* ("**TSCA**"), and it appreciates the guidance and support that the agency has provided over the years. However, the District respectfully disagrees with a number of the allegations set forth in the NOV and the accompanying cover letter, which imply that the District has failed to take action in response to the EPA's November 2, 2020 Warning Letter and that "egregious and ongoing violations"

remain at the SVEC. As set forth below, those implications appear to be based on a mistaken understanding of the conditions at the SVEC.

The following paragraphs set forth the District's initial responses to the allegations in the NOV. We look forward to discussing these issues during this Friday's meeting.

**Count 1 (Failure to Have an Active Approval)**

Count 1 is predicated on the allegation that the District "has not re-applied for a new approval for the Facility." *See* NOV, ¶¶ 14, 37. However, this allegation is incorrect. The District mostly recently requested a renewal of the 2017 Approval of Risk-Based Disposal Method for PCB Bulk Product Waste and PCB Remediation Waste (the "**Approval**") on April 28, 2023. *See* **Exhibit A**. The timing of this request was informed by communications with the EPA. *See* **Exhibit B**. To date, the District has not received a response to its renewal request, despite periodic prompts to the agency. *See* **Exhibits C–D**. If there is any additional information that the EPA needs from the District in order to process this request, the District would be happy to provide it.

**Counts 2–6 (Failure to Conduct Minimum Required Annual Wipe Samples)**

Counts 2 through 6 are based on the allegation that the District failed to collect the requisite number of wipe samples during the annual sampling events conducted between 2018 and 2022. *See* NOV, ¶¶ 43–44. Pursuant to the May 25, 2016 Corrective Action Plan, which is incorporated by reference in Condition No. 12 of the Approval, the District is required to collect wipe samples from a "minimum of 25% of the interior spaces where PCB containing caulk has been removed."

As documented in the 2018–2022 Annual Wipe Sampling reports, the District's consultant has collected 12 wipe samples each year from interior spaces within SVEC where PCB-containing caulk has been removed and analyzed them, using Method 8082, for the presence of PCBs. *See* **Exhibits E–I**. The 2017 Quality Assurance Project Plan (**Exhibit K-1**) states that there are a total of 50 interior locations characterized by the presence or former presence of PCB-containing caulk. *See* **Exhibit K-1** (Section 8.2). Twenty-five percent of 50 is 12.5. However, the District has since updated its calculation of interior locations characterized by the presence or former presence of PCB-containing caulk. As shown on **Exhibit K-2**, there are actually 45 such interior locations. Based on that updated calculation, the 12 wipe samples that the District has been collecting satisfy the 25% standard set forth in the Approval.

In reviewing the annual wipe sampling reports prepared to date, it appears that two samples collected in 2023 were taken from the exterior of the SVEC as opposed to interior

spaces. *See* **Exhibit J**. These samples are not addressed in the NOV. Going forward, the District will ensure that all 12 samples are collected from interior spaces.[1]

**Count 7 (Failure to Use Proper Wipe Sampling Method)**

Count 7 is based on the District's one-time use of NIOSH Method 5503 (rather than the EPA-approved Method 8082) to analyze the wipe samples that area documented in a November 12, 2019 monitoring report relating to samples collected from the SVEC's Administration Building. *See* NOV, ¶¶ 46, 51.

It is unclear why NIOSH Method 5503 was used for purposes of this sampling event; the District employee that oversaw this work no longer works for the District. However, the limited contemporaneous correspondence that the District has been able to locate suggests that the one-time use of NIOSH Method 5503 may have been based on extenuating circumstances.[2] Emails between the District's Devlin Piplic and the EPA's Michelle Mullin suggest that the laboratory that the District used for that particular sampling event (ALS Environmental) may have experienced an equipment loss, making it impossible for that lab to use Method 8082 at that time.

The District understands that PCBs must be analyzed using Method 8082. Except for the sampling documented in the November 12, 2019 report (which appears to have been done outside the scope of the annual wipe sampling), all wipe samples collected from SVEC and analyzed for PCBs have been analyzed using this EPA-approved method. *See* **Exhibits E–J**. The District has no plans to modify its use of Method 8082 unless directed to do so by EPA. Indeed, Method 8082 is specifically identified in the updated draft QAPP provided to EPA on April 28, 2023. *See* **Exhibit L**.

**Count 8 (Failure to Properly Dispose of PCBs)**

Count 8 appears to be based on the allegation that the District improperly disposed of 64 PCB-containing fluorescent light ballasts ("FLBs") between October 24, 2019 and December 7, 2020. *See* NOV, ¶ 61. In its December 7, 2020 Response to the EPA's November 2, 2020 Warning Letter, the District notified EPA that it had properly disposed of the FLBs (referred to in that letter as "remaining light fixtures presumed or shown to contain PCBs") using Clean Harbors, Inc. *See* **Exhibit M**. The District subsequently provided EPA with the documentation

[1] Separately, the District has reviewed the Inspection Report prepared in relation to the EPA's September 2022 inspection of the SVEC, which had not been previously provided to it. Based on that report, the District understands that some of the epoxy that exists on the exterior of the SVEC may be deteriorating. The District intends to repair the exterior epoxy, as set forth in Section 3.2 of the 2023 Draft Monitoring and Maintenance Implementation Plan, once that plan is approved by the EPA. *See* **Exhibit L**.

[2] Notably, the 2017 QAPP calls for the use of Method 8082 and not NIOSH Method 5503. *See* **Exhibit K-1** at Section 8.7 and Appendix C.

substantiating that disposal. *See* **Exhibits N–O**. The EPA appears to have been satisfied with the documentation that the District provided as it never requested any further information regarding that disposal. *See* **Exhibit P**. Accordingly, and to the best of the District's knowledge, the District did not improperly dispose of any FLBs.

**Count 9 (Failure to Properly Identify PCB Storage Area)**

Count 9 repeats the allegations that formed the basis of Potential Deviation #9 in the EPA's November 2, 2020 Warning Letter. *See* NOV, ¶ 62–67; *see also* **Exhibit Q**. As the District stated in its December 7, 2020 Response, the District addressed this potential deviation by correcting the signage on the entry door to the storage area several years ago. *See* **Exhibit M**. More importantly, the District no longer stores any PCB wastes at the SVEC; any such wastes are stored (only temporarily) at the District's off-site storage facility (1401 West Main Street) as documented in Section 8.0 of the 2023 Draft Monitoring and Maintenance Implementation Plan. *See* **Exhibit L**.[3] Accordingly, and to the best of the District's knowledge, there is no ongoing violation in relation to this former signage.

**Count 10 (Failure to Store PCB Waste in Secondary Containment)**

Count 10 repeats the allegations that formed the basis of Potential Deviation #10 in the EPA's November 2, 2020 Warning Letter. *See* NOV, ¶ 68–72; *see also* **Exhibit Q**. As the District stated in its December 7, 2020 Response, the District addressed this potential deviation by ensuring that all PCB wastes that were temporarily stored in this former storage facility were kept in drums that were situated on skid plates. *See* **Exhibit M**. More importantly, and as discussed above, the District no longer stores any PCB wastes at the SVEC; any such wastes are stored at the District's off-site storage, as documented in Section 8.0 of the 2023 Draft Monitoring and Maintenance Implementation Plan. *See* **Exhibit L**. Accordingly, and to the best of the District's knowledge, there is no ongoing violation in relation to the District's temporary storage of PCB wastes.

**Conclusion**

For the reasons set forth above, the District respectfully disputes the suggestion that there are significant and ongoing TSCA violations at that facility. Nonetheless, the District appreciates the EPA's ongoing assistance as it works to comply with the applicable provisions of TSCA and looks forward to the upcoming meeting with EPA representatives.

If you or Ms. Rebersak have any questions about the information set forth above or the attached Exhibits in advance of that meeting, please do not hesitate to contact me. Otherwise, we will be prepared to discuss these matters further this Friday.

[3] The fact that the District temporarily stores PCB wastes at an off-site facility is also noted in the EPA's September 2022 Inspection Report .

Sincerely,



Matthew J. Stock

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Enclosures (Exhibits A–Q)

cc: Shannon Rebersak, U.S. EPA (via email)
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