BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF:	)	EPA Docket No.
	)	RCRA-HQ-2017-0001
	)	
	)	
Whole Foods Market Group, Inc.,	)	Proceeding Under Section 3008(a) of the
Whole Foods Market California, Inc.,	)	Resource Conservation and Recovery Act,
Mrs. Gooch's Natural Food Markets, Inc.,	)	42 U.S.C. § 6928(a)
Whole Foods Market Pacific Northwest, Inc.,	)	
Whole Foods Market Rocky Mountain/	)	
Southwest, L.P.,	)	
WFM Northern Nevada, Inc.,	)	
WFM Southern Nevada, Inc.,	)	
WFM Hawaii, LLC,	)	
WFM Kansas, LLC,	)	
WFM-WO, Inc.,	)	
Nature's Heartland, Inc.,	)	
WFM Nebraska, LLC, and	)	
Whole Foods Market Lusher Court	)	
Frisco CO, LLC	)	
	)	
RESPONDENTS.	)	

CONSENT AGREEMENT AND FINAL ORDER

APPENDIX G

APPENDIX G
Replacement of Lighting Ballasts and Light Bulbs in Public Schools and Community Centers

1. Whole Foods Market shall provide for the removal and proper disposal of fluorescent lighting ballasts that contain polychlorinated biphenyls (PCBs) and the replacement and installation of new energy-efficient, PCB-free replacement lighting ballasts and light bulbs for public schools and/or community centers, as provided in this Appendix ("School Lighting Replacement SEP" or "SEP"). The focus of the School Lighting Replacement SEP is to protect the environment and public health by facilitating the safe identification, removal, and disposal of fluorescent lighting ballasts containing PCBs, and to replace them with energy efficient, non-PCB containing lighting fixtures. The School Lighting Replacement SEP shall: seek to reduce the use of lighting ballasts that contain PCBs in schools and/or community centers serving children (persons under the age of 18), including day-care centers and early childhood centers; ensure that equipment containing PCBs that is removed in this project is handled and disposed (removed from commerce) in accordance with applicable federal regulations set forth in 40 C.F.R. Part 761; and reduce energy demand through installation of energy-efficient lighting that contributes towards reduction in compounded toxics in the energy sector. Whole Foods Market shall also provide training to the school and community center personnel who handle hazardous waste. The training shall address the proper identification, handling and disposal of hazardous wastes located and used in the schools and community centers where this SEP is performed.

2. Whole Foods Market shall expend $2.75 million to implement this SEP.

3. To identify public schools and/or community centers in which to perform this SEP, Whole Foods Market shall:

a. Identify candidate communities in which to perform this SEP that:

i. Have low- to moderate-income residents within the candidate community, which may be identified by reference to census block group and tract data, as calculated by the Department of Housing and Urban Development (see https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-block-groups-places/);

ii. Are within a 50-mile radius of a Whole Foods Market store covered by this CAFO; and

iii. Have one or more public school and/or community center facilities located within the candidate community (*e.g.* within the census block group and tract).

b. Consult with the relevant public school district or other state or local authority with jurisdiction over the school or community center facilities to identify facilities which have or are likely to have lighting ballasts that contain PCBs (likely for

schools or community centers built before 1979 that have not had extensive lighting retrofits since 1979 and are using T-12 magnetic lighting ballasts). Priority for lighting ballast replacement should be given to those schools or centers with a significant number of children who qualify for a reduced or free lunch program.

Schools or community centers to be selected for lighting replacements and training under this SEP shall be located in multiple regions of the United States (*e.g.*, Northeast, Mid-Atlantic, Pacific Northwest, etc.) where Whole Foods Market Stores are located, as identified in Paragraph 1 of the CAFO and listed in Appendix A.

4. All replacement lighting ballasts and light bulbs shall be electronic and shall have an energy efficiency that is equivalent to or better than T-8 (based on energy efficiency standards set by the U. S. Department of Energy) with preference given to LED light fixtures, if feasible.

5. Lighting ballasts removed under this SEP shall be assumed to have PCB waste and shall be properly disposed of in accordance with 40 C.F.R. Part 761, unless such ballasts are clearly marked or labeled to have no PCBs.

6. Whole Foods Market is responsible for the satisfactory completion of this SEP in accordance with the requirements of this Appendix. Whole Foods Market may use contractors or consultants in planning and implementing this SEP.

7. The School Lighting Replacement SEP shall be completed within three (3) years after the Effective Date of this CAFO; however, this date may be extended by mutual agreement between Whole Foods Market and EPA in writing.

8. Upon completion of this SEP, Whole Foods Market shall submit to EPA a "SEP Completion Report" no later than ninety (90) days from the date of the SEP's completion. The SEP Completion Report shall contain, at a minimum:

a. A detailed description of the School Lighting Replacement SEP as completed, including the number and locations of the schools and/or community centers addressed under this SEP along with the number of fixtures with replaced lighting at each school and/or center;

b. A description of how low- or moderate-income communities meeting the criteria in Paragraph 3.a were identified;

c. Records demonstrating that the lighting ballasts were properly disposed of in accordance with 40 C.F.R. Part 761;

d. The dates and locations of each training session provided for school and community center personnel, the number of personnel receiving such training, and a summary description or course outline of the training;

e. A description of any problem(s) encountered in completing the SEP and their solution(s);

f. An itemized list and/or documentation of all SEP costs expended;

g. Evidence or information documenting the SEP's completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence from SEP recipients, etc.); and

h. To the extent possible, a statement of the benefits associated with this SEP as implemented and an explanation of how such benefits were measured or estimated.

The SEP Completion Report must be certified by an appropriate corporate official, and a certificate stating:

> "I certify that the project has been fully implemented pursuant to the provisions of the Consent Agreement and Final Order in *In the Matter of Whole Foods Market Group, Inc., et al.*, EPA Docket No. RCRA-HQ-2017-0001, that I am familiar with the information in this document, and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

9. EPA may require information in addition to that described in the preceding Paragraph, in order to evaluate Whole Foods Market's completion of the SEP. After receiving the SEP Completion Report, EPA shall notify Whole Foods Market in writing within sixty (60) days whether it agrees that the SEP is satisfactorily completed, or if EPA does not agree it shall identify the basis for its position. "Satisfactorily completed" means completion of this SEP in accordance with the provisions of this Appendix G. If EPA does not agree that Whole Foods Market has satisfactorily completed the SEP, Whole Foods Market shall address the matters identified in EPA's objection, and may thereafter recertify completion of the SEP. Upon notification by EPA that it agrees with Respondents' certification, or if EPA does not respond within sixty (60) days, Whole Foods Market shall have no further obligations under this SEP.

10. Whole Foods Market certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this CAFO, Whole Foods Market is not required to perform or develop any SEP in this Appendix by any federal, state, or local law or regulation and is not required to perform or develop this SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the SEP is not a project that Whole Foods Market was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

c. that Whole Foods Market has not received and will not receive credit for this SEP in any other enforcement action; and

d. that Whole Foods Market will not receive any reimbursement for any portion of this SEP from any other person.

11. Whole Foods Market further certifies that it is not a party to any open federal financial assistance that is funding or could be used to fund the same activity as this SEP, and that to the best of Whole Foods Market's knowledge and belief after reasonable inquiry, there is

no such open federal financial transaction that is funding or could be used to fund the same activity as this SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

12. Disputes concerning the satisfactory performance of this SEP may be resolved under Section VII of this CAFO (Dispute Resolution).

13. Any public statement, oral or written in print, film, or other media, made by Whole Foods Market making reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *In the Matter of Whole Foods Market Group, Inc., et al.,* EPA Docket No. RCRA-HQ-2017-0001, to enforce federal laws."

14. For federal income tax purposes, Whole Foods Market agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.