Message

From: Peachey, Robert [peachey.robert@epa.gov]
Sent: 9/10/2019 7:13:44 PM
To: Moore, Kendall [moore.kendall@epa.gov]
Subject: FW: Bard v. Monroe S.D._PCB Materials
Attachments: Bard - Ltr to Monsanto Counsel re Barrel.pdf; Bard - Ltr to Parties re Drum Barrels.pdf; 20190807_133207.jpg; MPS Standard Operating Procedure PCB Ballasts.doc; Bard - Sample Ltr from OC re Preserving Evidence.pdf

Ex. 5 AC/DP

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From: Scott I. Jamieson <sij@pattersonbuchanan.com>
Sent: Monday, August 19, 2019 12:52 PM
To: Peachey, Robert <peachey.robert@epa.gov>
Cc: Mannix, John <mannixj@monroe.wednet.edu>; Patrick S. Schoenburg <pschoenburg@wshblaw.com>; Jennifer R. Friesen <jrf@pattersonbuchanan.com>; D. Jack Guthrie <djg@pattersonbuchanan.com>
Subject: RE: Bard v. Monroe S.D._PCB Materials

Mr. Peachey,

I write to respond to the EPA's questions to Monroe School District.

Is there a Protective order or similar court document that restricted disposal of PCB drum?

The District has a duty under Washington law to preserve all potential evidence currently in its possession related to pending litigation including the *Bard, et al. v. Monroe School District, et al.* case (King County Superior Court Cause No. 18-2-00001-7 SEA). *See generally Henderson v. Tyrell, 80 Wn. App. 592, 605-606, 910 P.2d 522 (1996); See also Pier 67, Inc. v. King County, 89 Wn.2d 379, 385-86, 573 P.2d 2 (1977) (county's failure to preserve evidence of property valuation methodology used as substantive evidence of discrimination).* Plaintiffs' counsel has also provided a notice and demand to preserve all evidence when serving Tort Claim Notices for each Claimant. *See* attached sample letter from Plaintiffs' counsel at pages 4-5.

However, on May 13, 2019, we advised the parties to the litigation that the District planned to dispose of the drum barrels and the materials within it in accordance with EPA regulations since access had been provided to the other parties during the January 2019 site inspection that was conducted as part of the litigation. *See* attached letter. Plaintiffs' counsel did not object to the District disposing of the barrels, however, co-defendant Monsanto objected. We then advised counsel for Monsanto that the District had been advised by the EPA that the drum and its

contents need to be disposed of. The District stated that if Monsanto wants to take possession of the drum, we would provide the contact information for the staff at the EPA who can advise as to the feasibility of that. *See* attached letter. We provided counsel for Monsanto with your contact information, and we were advised that they would be contacting you regarding the steps necessary to take possession of the materials.

Explanation of what's in the drum, whether the material came from SVEC or not, if it came from SVEC then where specifically the material came from, when was the PCB material discovered, when collection started, when collection ended, why you were waiting for the barrel to fill- what other PCB activities are you engaged in that you were expecting to accumulate, why it's marked 12/18, description of where its stored (does area have roof, walls, continuous floor without drains), is area marked with PCB label (please provide photos)?

The District stores two drum barrels in the Transportation Shed, which is located on District property. However, the Transportation Shed is not located near a school facility. The purpose of these barrels is to store any potential PCB material that is collected from its original location for storage until it can be disposed of. The drums are located on a spill drum containment platform. *See* attached photo. The Transportation Shed is only accessed by maintenance and facilities personnel. No other staff or students have access to the Transportation Shed. It only has one door, no drains and is properly marked for PCB and hazardous materials.

The barrels contain metal components that were leftover from the 2016 SVEC remediation project and two metal components and base plates that were removed from SVEC in December 2018. In December 2018, it was determined that the main office at SVEC had a light fixture that was not operating correctly and a hardened black substance was observed by the technician on the fixture. During the repair, the technician treated the fixture component as potential PCB material even though air testing indicated that the location did not have any airborne PCBs. During this process, the technician discovered that another lighting fixture base plate in the SVEC main office had not been removed as part of the 2016 remediation project. There was no soiling on the plate, however, it was removed as a precaution nonetheless. The two base plates and metal components that were removed were bagged, sealed, labeled with the date (12/18) and moved to the drums in the Transportation Shed.

Nothing has been added to the barrels since December 2018.

Explain where the sample from the transportation shed was collected. The letter we have states it came from a lighting fixture base plate and presumes it was from a ruptured FLB used at SVEC and later stored in the shed. The question EPA has is where in the shed was this sample found?

The samples collected were from the lighting fixture component removed from SVEC and stored in at least a six ml thick bag in the drums in the Transportation Shed.

Describe whether there are PCB FLBs in use in the transportation shed or not, if so, is there any evidence of leaking

There are no PCB FLBs in use in the Transportation Shed. The Transportation Shed is simply used to store the drums containing potential PCB material from SVEC.

Confirm whether you are following the MMIP incorporated into the approval, particularly the housekeeping provisions.

The District followed the proper protocols for removal of potential PCB materials as outlined in the attached SOP for PCB Fluorescent Light Ballast Management.

Thanks,
Scott

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From: Peachey, Robert <peachey.robert@epa.gov>
Sent: Monday, August 12, 2019 1:11 PM
To: Mike T. Kitson <mtk@pattersonbuchanan.com>
Cc: Mannix, John <mannixj@monroe.wednet.edu>; Patrick S. Schoenburg <pschoenburg@wshblaw.com>; Scott I. Jamieson <sij@pattersonbuchanan.com>; Jennifer R. Friesen <jrf@pattersonbuchanan.com>; D. Jack Guthrie <djg@pattersonbuchanan.com>
Subject: RE: Bard v. Monroe S.D._PCB Materials

Dear Mr. Kitson:

Thanks for your message. We look forward to getting the response this week. Best of luck at your new firm.

--Bob Peachey

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From: Mike T. Kitson <mtk@pattersonbuchanan.com>
Sent: Monday, August 12, 2019 2:35 PM
To: Peachey, Robert <peachey.robert@epa.gov>
Cc: Mannix, John <mannixj@monroe.wednet.edu>; Patrick S. Schoenburg <pschoenburg@wshblaw.com>; Scott I. Jamieson <sij@pattersonbuchanan.com>; Jennifer R. Friesen <jrf@pattersonbuchanan.com>; D. Jack Guthrie <djg@pattersonbuchanan.com>
Subject: RE: Bard v. Monroe S.D._PCB Materials

Robert,

I am following up with you regarding the EPA's questions to Monroe School District. We are working with the District to finalize the District's response. We will get it over to you this week.

Please note, I am leaving Patterson Buchanan for a different law firm at the end of this week. Moving forward, Scott Jamieson and Jack Guthrie will be the points of contact at Patterson Buchanan for inquiries pertaining to Monroe School District. Their contact information is below:

Jack Guthrie
djg@pattersonbuchanan.com

Scott Jamieson
sij@pattersonbuchanan.com

Best,

Mike

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From: Mike T. Kitson
Sent: Friday, May 3, 2019 3:38 PM
To: peachey.robert@epa.gov
Cc: Mannix, John <mannixj@monroe.wednet.edu>; Patrick S. Schoenburg <pschoenburg@wshblaw.com>; Scott I. Jamieson <sij@pattersonbuchanan.com>; Jennifer R. Friesen <jrf@pattersonbuchanan.com>
Subject: Bard v. Monroe S.D._PCB Materials

Good Afternoon Robert,

Thank you for your call today. Per your request this email is provided to recap the information I provided to you in our call.

As I indicated, the District has been required to hold onto evidence pertaining to the Bard v. Monroe School District litigation. Plaintiffs' counsel sent the District a litigation hold request with the tort claims that were filed in August 2017. At the time the litigation hold was received, the District had possession of one steel drum that had PCB-containing materials in it. This steel drum was, and still is, being stored in a locked maintenance shed. This shed is not

on a school campus and is therefore inaccessible to anyone except for a select number of District maintenance personnel. Plaintiffs recently conducted a site inspection, and their experts were provided access to the steel drum to test its contents. Accordingly, the District will be reaching out to the parties to see if there is any objection to the District disposing of the materials per EPA guidelines. We will let you know if any of the parties object to disposal of the materials and request possession of the drum.

Please do not hesitate to contact me if you have any questions or concerns.

Best,

Mike

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