UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of: Fairfield School District Fairfield, Connecticut Respondent Proceeding under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)	**TSCA-01-2014-0046** **CONSENT AGREEMENT AND FINAL ORDER**

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency ("EPA"), Region 1, alleges that Respondent, Fairfield School District ("Fairfield"), violated Section 15 of the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The violations concern PCB-containing materials in use in the Riverfield Elementary School building located at 1625 Mill Plain Road in Fairfield, Connecticut.

2. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment

of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered and adjudged as follows:

II. TSCA STATUTORY AND REGULATORY AUTHORITY

4. Section 6(e)(2) of TSCA, 15 U.S.C. § 2605(e)(2), prohibits the manufacture, processing, distribution in commerce, or use of any polychlorinated biphenyl in any manner other than in a totally enclosed manner except as authorized by EPA.

5. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

6. The PCB Regulations, 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

7. The PCB Regulations establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." See 40 C.F.R. § 761.1(a).

8. The PCB Regulations define "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances

which contain such substance." See 40 C.F.R. § 761.3.

9. The PCB Regulations define "excluded PCB products" in part as "materials which appear at concentrations less than 50 parts per million ("ppm"), including but not limited to: products contaminated with Aroclor or other PCB materials from historic PCB uses." See 40 C.F.R. § 761.3.

10. Forty C.F.R. § 761.20(a) establishes that "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, except that: (1) an authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in § 761.3."

11. Forty C.F.R. § 761.50 requires that any person storing or disposing of PCB waste must do so in accordance with Subpart D of the PCB Regulations. Forty C.F.R. §§ 761.61 and 761.62 are part of Subpart D of the PCB Regulations.

12. Forty C.F.R. §§ 761.61 and 761.62 regulate the proper disposal of PCB remediation waste and PCB bulk product waste, respectively, as those terms are defined at 40 C.F.R. § 761.3.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Respondent operates the Riverfield Elementary School.

14. Respondent is a "person," as that term is defined at 40 C.F.R. § 761.3, and is subject to the prohibitions set forth in TSCA and the PCB Regulations.

15. Fairfield proposes a renovation of existing school buildings that will primarily consist of interior renovations (window and door replacement, reconfiguration of interior spaces, and

replacement of select flooring systems), and will include an addition. As part of the preparation for the interior renovation work, Fairfield conducted a hazardous materials survey and sampling program.

16. The hazardous materials survey included the collection and analysis for PCBs of various samples. PCBs at below 50 ppm, and at or above 50 ppm, were detected in a variety of building materials in the Riverfield School gymnasium (hereinafter referred to as the "Facility"), including interior and exterior door caulk, expansion joint caulk, and exterior/interior wall waterproofing felt.

17. As noted above, pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB or PCB Item regardless of concentration in any manner other than in a totally enclosed manner within the United States unless authorized under 40 C.F.R. § 761.30 or unless the PCB or PCB Item is excluded from regulation under 40 C.F.R. §§ 761.20(a)(1)-(4).

18. The continued use of the PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt is not authorized under any provision of 40 C.F.R. §§ 761.20(a)(1)-(4).

19. The continued use of the PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt is not authorized under any provision of 40 C.F.R. § 761.30.

20. Accordingly, based on the unauthorized use of PCBs described above, Respondent is in violation of 40 C.F.R. § 761.20(a) and Sections 6 and 15 of TSCA.

21. Respondent has not properly disposed of PCBs at or above 50 ppm in door caulk, expansion joint caulk, and waterproofing felt at the Facility. Accordingly, Respondent is in violation of 40 C.F.R. §§761.50, 761.61, and 761.62.

22. The Town has submitted a PCB remediation plan dated January 2014 that includes removal of PCB caulk, certain building substrates, and certain waterproofing felt at or above 50 ppm; encapsulation of building substrates with PCBs above 1 ppm; and, in-place interim management of waterproofing felt which contains PCBs at or above 50 ppm until the walls containing the substrates and/or the waterproofing felt are demolished or otherwise disturbed as part of the planned renovation activities.

23. The walls containing PCB-contaminated substrates and/or waterproofing felt have exterior bricks that interlock with interior concrete blocks, forming a composite wall assembly. The composite wall assemblies also brace existing steel tube columns embedded within the walls. As such, removal of masonry wall materials along expansion joints or door joints could impact the structural integrity of the walls.

24. Waterproofing felt located between the interlocked bricks and concrete blocks cannot be removed without removal of the entire wall. Therefore, complete demolition and reconstruction of the gymnasium would be required to remove the waterproofing felt in its entirety.

IV. GENERAL TERMS OF SETTLEMENT

25. The provisions of this CAFO shall apply to and be binding on Respondent and its officers, directors, successors and assigns until Respondent has completed all of the obligations required by this CAFO.

26. Respondent stipulates that Complainant has jurisdiction over the subject matter alleged in this CAFO. For purposes of this CAFO, including any further action to enforce the terms of this CAFO, Respondent waives any defenses it might have as to jurisdiction and venue.

27. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

28. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

29. Without admitting or denying the factual findings and allegations in this CAFO, Respondent consents to the terms and issuance of this CAFO.

V. COMPLIANCE WITH REGULATORY REQUIREMENTS

30. Respondent voluntarily submitted a PCB remediation plan for EPA approval under 40 CFR Sections 761.61 and 761.62, to properly dispose of or otherwise address PCB caulk, certain PCB-contaminated building substrates, and certain waterproofing felt at or above 50 ppm, and for encapsulation of certain building substrates with PCBs above 1 ppm. EPA and Respondent anticipate that Respondent will undertake those activities in compliance with an EPA approval and with the PCB Regulations.

31. As a condition of settlement, Respondent agrees to the non-penalty PCB Cleanup and Disposal Conditions in Attachment 1. The PCB Cleanup and Disposal Conditions, any documents submitted or recorded pursuant to the PCB Cleanup and Disposal Conditions, and any EPA-approved revisions or modifications hereto, are incorporated into this CAFO.

VI. PENALTY

32. Pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990, Complainant has considered the nature, circumstances, extent, and gravity of the alleged violations; Respondent's

ability to pay; the effect of the penalty on Respondent's ability to continue its operations; Respondent's history of prior violations; Respondent's degree of culpability; any economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Attachment 1 and in submitting its PCB remediation plan for EPA approval, Complainant has determined to assess a civil penalty in the amount of $37,500 for the TSCA violations alleged herein.

33. Pursuant to 40 C.F.R. § 22.31(c) and TSCA Section 16(a)(2)(C), 15 U.S.C. § 2615(a)(2)(C), Complainant remits the payment of the entire civil penalty by Respondent, provided Respondent complies with the conditions set forth in the PCB Cleanup and Disposal Conditions of Attachment 1. The payment of the civil penalty by Respondent is therefore deferred and not due and owing unless Complainant issues an order requiring payment of the penalty ("Non-remittance Order").

34. Complainant agrees to remit the entire penalty and issue a remittance Order upon Respondent's completion, to Complainant's satisfaction, of the attached PCB Cleanup and Disposal Conditions, Attachment 1, and other obligations contained herein.

35. Prior to making a determination that Respondent has failed to implement the PCB Cleanup and Disposal Conditions, and/or Respondent's other obligations contained herein, Complainant will give Respondent written notice of deficiencies and provide Respondent reasonable time to cure any such deficiencies that can be cured. Such notice is not required before stipulated penalties accrue in accordance with Section IX of the CAFO.

36. If Complainant in its sole discretion determines that Respondent has failed to

implement its obligations under this CAFO fully and satisfactorily, Complainant may issue a Non-remittance Order requiring Respondent to pay the civil penalty plus interest accrued from the date of the issuance of the Final Order for this settlement. The Non-remittance Order will set forth the details of the penalty payment procedures and calculations.

VII. ACCESS

37. Respondent shall provide access to the Facility at reasonable times to EPA officials and authorized representatives. Respondent shall also provide access at reasonable times to all records and documentation in Respondent's possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the actions conducted pursuant to this CAFO. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this CAFO. Such access shall be provided to EPA and its authorized representatives, who shall be permitted to move freely about the buildings and properties and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. Respondent has a right to accompany EPA representatives at all times when such representatives are on Respondent's property.

38. Any denial of access at reasonable times or to any portion of the Facility shall be construed as a violation of the terms of this CAFO, subject to the stipulated penalties provisions outlined herein.

VIII. REPORTING AND RECORDKEEPING

39. Any reports required to be submitted by Respondent pursuant to the PCB Cleanup and Disposal Conditions or otherwise shall be transmitted to Complainant by a responsible and

authorized official of the Respondent, signed and certified as follows:

> I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information set forth in this document is true, accurate and complete. I am aware that there are significant penalties for submitting materially false information, including the possibility of fines and imprisonment.

40. The responsible official of the Respondent shall send all communications or required reports concerning this CAFO to Complainant's Project Coordinator, who until further notice shall be:

Kimberly Tisa
PCB Coordinator
RCRA Corrective Action Section
Mailcode OSRR07-2
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

41. Respondent shall name a Project Coordinator and supply his or her name and contact information to Complainant within ten (10) days after the effective date of this CAFO. If the Project Coordinator changes, Respondent shall provide new contact information to Complainant, in writing, within ten (10) days of the change.

42. *Document Retention:*

(a) Until at least seven years after all of Respondent's obligations under this CAFO have been met, Respondent shall retain all non-identical copies of all documents, records or other information (including documents, records, or other information in electronic form) in its possession or control, that relate in any manner to Respondent's performance of its obligations under this CAFO. This information-retention requirement shall apply regardless of any shorter

retention period under institutional policies or procedures, or federal, state, or local law. At any time during this information-retention period, upon request by EPA, Respondent shall provide copies of any documents, records, or other information required to be maintained under this CAFO.

(b) Respondent shall notify EPA in writing thirty (30) days before destroying any documents, records or other information and give EPA the opportunity to take possession of any non-privileged documents.

(c) Respondent shall include a provision in all contracts relating to the activities described in Attachment 1, the PCB Cleanup and Disposal Conditions, and in the CAFO that requires that the contractor (i) preserve all documents, records, or other information relating to the contract during the course of the contract and provide such information within seven days of request by either Respondent or EPA; and (ii) deliver a copy of all documents, records, or other information relating to the contract to Respondent upon completion of the contract, at which point the contractor's record-keeping retention obligations under this CAFO would end. However, nothing in this subparagraph is intended to limit EPA's information gathering authority under any statute.

IX. STIPULATED PENALTIES

43. If Respondent fails to comply with any record-retention requirement of Section VIII, Respondent shall be liable for a stipulated penalty of five thousand dollars ($5,000) per violation, up to a maximum stipulated penalty of $50,000. If Respondent fails to comply with any other term of this CAFO, including, but not limited to, the terms and conditions of the PCB Cleanup and Disposal Conditions and documents submitted pursuant to the PCB Cleanup and Disposal

Conditions, Respondent shall be liable for stipulated penalties of: five hundred dollars ($500) for each day that Respondent is in violation, and such violation occurs or continues for day one (1) through day thirty (30); one thousand five hundred fifty dollars ($1,500) for each day Respondent is in violation, and such violation continues for day thirty-one (31) through day sixty (60); two thousand dollars ($2,000) for each day Respondent is in violation, and such violation continues for day sixty-one (61) through day one hundred twenty (120); and three thousand dollars ($3,000) for each day Respondent is in violation, and such violation continues beyond day one hundred twenty one (121). A separate stipulated penalty shall apply and accrue for each provision of this CAFO that is violated.

44. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion of the activity.

45. Payment of stipulated penalties shall be made in accordance with Paragraph 50 within thirty (30) days of receipt of written demand by Complainant unless Complainant specifies a greater amount of time in its written demand.

46. Payment of stipulated penalties shall be in addition to any other relief available under federal law. Complainant may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO. If, upon receipt of the written demand, Respondent believes that the stipulated penalty is inappropriate, Respondent may invoke Dispute Resolution procedures of Section X. If Complainant agrees with Respondent's argument, Complainant may, in its sole discretion, reduce the amount of the written demand or withdraw it. Respondent shall pay any stipulated penalty subsequently assessed within ten (10) days of receiving Complainant's decision.

47. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, Complainant is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on stipulated penalties assessed pursuant to Paragraph 43 that have not been paid within the time specified by Complainant. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

48. All penalties, stipulated penalties, interest, and other charges shall represent penalties assessed by Complainant, and shall not be deductible for purposes of federal taxes.

49. Payment of any stipulated penalty, interest, or other charges does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

50. Payment of any stipulated penalty under this CAFO shall be made by a bank, cashier's or certified check made payable to the "Treasurer, United States of America." The check should also note the docket number of the Complaint (TSCA-01-2014-0046) and should be forwarded to:

U.S. EPA
Fines and Penalties
Cincinatti Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, Respondent should also forward notice of payment of the stipulated penalty as well as a copy of the payment check to the Regional Hearing Clerk and EPA's counsel at their respective mailing addresses below:

Thomas T. Olivier
Senior Enforcement Counsel
Office of Environmental Stewardship
Mail code OES-04-3
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

51. Failure to pay the amount in full within the time period demanded in a Non-remittance Order or written demand may result in referral of the debt to the United States Department of Justice or the United States Department of the Treasury for collection.

X. DISPUTE RESOLUTION

52. Complainant and Respondent shall use their best efforts to informally and in good faith to resolve disputes and differences of opinion, which may arise concerning provisions of this Order. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by Complainant pursuant to this Order with respect to the following: (1) rejection,

modification or substitution of any document submitted pursuant to the PCB Cleanup and Disposal Conditions; (2) a determination by Complainant to issue a Non-remittance Order pursuant to paragraph 36 of this CAFO; (3) a decision to modify the CAFO pursuant to paragraphs 58 or 59 below); or (4) a decision to demand stipulated penalties, Respondent shall notify Complainant in writing of such objections and the basis or bases for such objections within twenty (20) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis or bases for Respondent's position, and any matters the Respondent considers necessary for Complainant's determination. Following Complainant's receipt of such written notice, Complainant will provide its decision in writing on the pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that Complainant's final determination is pending.

XI. FORCE MAJEURE

53. When circumstances caused by a Force Majeure event (as defined in paragraph 56 below) may delay or prevent the performance of any obligation under this CAFO, Respondent shall so notify Complainant in writing within ten (10) days after Respondent's knowledge of such circumstances. The written notice shall include the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by Respondent to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Upon request, Complainant may extend this 10-day time frame if, in Complainant's sole discretion, Complainant finds an extension to be appropriate.

54. If Complainant agrees that a delay or failure to perform an obligation under this

CAFO is or was caused by a Force Majeure event, the time for performance of such obligations will be extended for such time as is necessary to complete those obligations, Complainant will notify Respondent in writing of the length of the extension, and stipulated penalties shall not accrue with respect to such obligations during the extended time for performance. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation.

55. If Complainant does not agree that a delay or failure to perform an obligation under this CAFO is or was caused by a Force Majeure event, or does not agree with Respondent on the length of the proposed extension of time due to the Force Majeure event, Complainant shall notify Respondent in writing of its decision and the basis therefore.

56. "Force Majeure," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any obligation under this CAFO despite Respondent's best efforts to fulfill the obligation. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, change of ownership of the Facility, failure to obtain federal, state, or local permits, or any other financial inability by Respondent to meet any obligation of this CAFO.

XII. MODIFICATION AND TERMINATION

57. The terms of this CAFO may be modified only by written agreement of the parties and signature by the Regional Administrator, EPA Region 1.

58. Within sixty (60) days of the effective date of any federal regulations that change regulations for the use of PCB products such as waterproofing felt, Respondent shall submit a

proposal specifying if and how this agreement should be modified to comply with the new regulations. Complainant shall review such proposal and, either approve, reject, or modify the proposal in writing ("EPA's decision"). The parties shall subsequently amend the terms of this agreement in accordance with EPA's decision. Respondent shall be entitled to a CAFO modification or termination if the new regulations authorize the use of PCBs at the levels at which PCBs are found at the Facility.

59. The following additional provisions govern modification of the 10-year deadline to remove all PCB-contaminated waterproofing felt found in Attachment 1, Section 1.a:

(a) Respondent may meet annually with EPA to discuss the status of the 10-year deadline, which may be affected by, among other things, (i) the success or failure of the interim measures to address risks to human health and the environment; (ii) Respondent's finances; or (iii) the status of new regulations or scientific data with respect to the PCBs in felt waterproofing at the Facility.

(b) Respondent may propose for EPA's approval and at EPA's sole discretion, an extension of up to five years to the schedule in Section 1.a of Attachment 1, if timely cleanup and disposal of waterproofing felt at the Facility is infeasible due to financial constraints.

XIII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

60. This CAFO constitutes a settlement by Complainant of all claims for civil penalties pursuant to Section 16 of TSCA for the specific violations alleged in paragraphs 18 through 21 of this CAFO, up to the date of issuance of this CAFO.

61. Respondent's obligations under this CAFO are severable. If a court of competent jurisdiction enters a final judgment holding invalid any material provisions of this CAFO, the

remainder of Respondent's obligations under the CAFO shall remain in force and shall be fully enforceable.

62. Nothing in this CAFO shall prevent Complainant from taking any necessary action to address conditions which may present an imminent and substantial endangerment to public health or the environment; nor shall this CAFO be construed to, nor is it intended to operate in any way to resolve any criminal liability or any other civil liability of Respondent.

63. Except as provided in paragraph 60, Complainant reserves its rights to bring enforcement actions against Respondent for alleged PCB violations under TSCA and any other applicable laws or regulations.

64. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA, the PCB regulations, and all other federal, state, and local laws, regulations, permits, or other requirements. However, this CAFO does provide an extended schedule for coming into compliance with the PCB regulations at the Facility.

65. Except as described in Paragraph 47, each party shall bear its own costs and fees in this proceeding.

66. Pursuant to 40 C.F.R. 22.31(b), the effective date of this CAFO shall be the date when such document is filed with the Regional Hearing Clerk. After such filing, Complainant will notify Respondent of the effective date.

67. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: Fairfield School District, TSCA-01-2014-0046

For Fairfield School District:

Michael C. Tetreau
First Selectman

7/17/14
Date

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of: Fairfield School District, Docket No. TSCA-01-2014-0046

For U.S. EPA, Region 1:

8/07/14

H. Curtis Spalding
Regional Administrator
U.S. EPA, Region 1

Date

XIV. FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Fairfield School District, is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: 8/11/14

In the Matter of: Fairfield School District, Docket No.TSCA-01-2014-0046

ATTACHMENT 1

PCB CLEANUP AND DISPOSAL CONDITIONS
FAIRFIELD SCHOOL DISTRICT
RIVERFIELD ELEMENTARY SCHOOL
1625 MILL PLAIN ROAD
FAIRFIELD, CONNECTICUT

GENERAL CONDITIONS

1. These PCB Cleanup and Disposal Conditions apply solely to PCB-contaminated waterproofing felt and associated PCB-contaminated building substrates (i.e., exterior/interior walls that have been in contact with the PCB-contaminated waterproofing felt) located in the Facility (hereinafter referred to as the "waterproofing felt and substrates").

   a. No later than 10 years from the effective date of the CAFO Fairfield shall remove all waterproofing felt and substrates and dispose of such materials in accordance with 40 CFR Part 761.

   b. At least 180 days prior to the expiration date established under Section 1.a of this Attachment 1, Fairfield shall submit a PCB cleanup and disposal plan to address the waterproofing felt and substrates.

      i) Such plan may provide for the cleanup and disposal of the waterproofing felt and substrates in phases.

      ii) In the event that Fairfield conducts any renovation or demolition activities at the Facility that would impact the waterproofing felt and substrates, Fairfield shall be required to notify EPA and to submit a PCB cleanup and disposal plan for the specific project.

      iii) Any such plan must include a description of the project and how the project will meet the requirements under the CAFO and 40 CFR Part 761. A contractor work plan, prepared and submitted by the selected contractor(s), detailing the procedures that will be employed for removal of PCB-contaminated materials, for containment design, and for air monitoring during cleanup and handling of PCB-containing materials, shall also be submitted. The contractor work plan shall address waste storage, handling, and disposal for each waste stream type and for equipment decontamination

2. Fairfield shall be responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are involved in PCB maintenance, cleanup, or disposal activities conducted at the Facility.

3. If at any time Fairfield has or receives information indicating that Fairfield or any other person has failed, or may have failed, to comply with any requirement under the CAFO or the federal PCB regulations under 40 CFR Part 761, it shall report the information to EPA in writing within 24 hours of having or receiving the information.

4. Fairfield shall comply with all applicable federal, state and local regulations in the storage, handling, and disposal of all PCB wastes, including PCBs, PCB Items and decontamination wastes that may be generated at the Facility during renovation or maintenance activities while the CAFO is in force. In the event of a new spill or release of PCBs during maintenance, cleanup, or disposal activities, Fairfield shall contact EPA within 24 hours.

TEMPORARY IN-PLACE MAINTENANCE CONDITIONS

5. Fairfield shall conduct indoor air sampling for PCBs annually, or at such other times as EPA may direct, to determine whether the waterproofing felt and substrates are posing an unreasonable risk of harm to Facility users. Within 180 days of the effective date of the CAFO Fairfield shall submit for EPA approval, and thereafter implement, a monitoring plan ("MP") that includes the following:

   a. a description of the indoor sampling activities that will be conducted, including sampling protocols, sampling frequency, and analytical criteria and, reporting requirements.

   b. a communications component which details how the indoor air results will be communicated to the Facility users, other on-site workers, and interested stakeholders.

   c. submission of monitoring results to EPA. Based on its review of the monitoring results, EPA may determine or the Respondent may propose for EPA review and approval that modification to the MP is necessary in order to support the temporary maintenance of the waterproofing felt and substrates or warranted based on the monitoring results.

   d. continuation of activities required under the MP until EPA determines, in writing, that such activities are no longer necessary.

6. Indoor air sampling shall be conducted in accordance with EPA Method TO-4A or TO-10A. Sufficient sample volumes shall be collected to provide a minimum laboratory reporting limit of less than ("<") 0.05 $\mu g/m^3$ for total PCBs. PCB analysis shall be conducted for PCB homologues and/or PCB congeners by EPA Method 680, EPA Method 1668 or an equivalent method.

7. In the event that PCB concentrations in an indoor air sample are greater than (">") 0.10 $\mu g/m^3$, Fairfield shall contact EPA for further discussion and direction on alternatives,

which may include development of a site-specific risk exposure assessment or initiation of additional measures and/or removal and disposal of PCBs.

DEED RESTRICTION AND USE CONDITIONS

8. Within 180 days of the effective date of the CAFO Fairfield shall submit for EPA review and approval a draft deed restriction that shall include:
   a. a description of the extent and levels of PCB contamination at the Facility and a description of the use restrictions for the Facility, as applicable;

   b. the monitoring requirements for indoor air, which may be addressed by the MP (see Condition 5).

   c. within seven days of receipt of EPA's approval of the draft deed restriction, Fairfield shall record the deed restriction.

9. The deed restriction shall include a figure identifying the location(s) of the waterproofing felt and substrates that remain in-place and which are addressed under the CAFO.

10. In the event that Fairfield sells, leases, or transfers any portion of the school where the waterproofing felt remains in-place, Fairfield and/or the new owner shall be required to develop a plan to address the waterproofing felt in accordance with 40 CFR §§ 761.61 and 761.62.

INSPECTION AND REVOCATION CONDITIONS

11. The schedule provided in this Attachment 1 for the temporary in-place maintenance of the waterproofing felt and substrates may be revoked, modified or otherwise altered:
    a. if EPA finds a violation of the conditions of the CAFO or of 40 CFR Part 761, including EPA's PCB Spill Cleanup Policy, or other applicable rules and regulations;

    b. if EPA finds that the covered activities present an unreasonable risk of injury to human health or the environment;

    c. or if EPA finds that changes are necessary to comply with new rules, standards, or guidance.

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END OF ATTACHMENT 1