



September 26, 2016

Mr. Peter Gimlin
National Program Chemicals Division/OPPT
U.S. Environmental Protection Agency
Mail Code 7404-T
Washington, DC 20460

Re: E.O. 13132: Federalism and UMRA Consultation on Reassessment of Use Authorizations for PCBs in Small Capacitors: PCB Light Ballasts in Schools and Daycares

Dear Mr. Gimlin,

On behalf of the nation's mayors, cities, counties, county executives, school superintendents, school business officials, rural school advocates, and school board members, we appreciate the opportunity to provide comments pursuant to Executive Order 13132: Federalism regarding the U.S. Environmental Protection Agency's (EPA) potential changes to the polychlorinated biphenyls (PCBs) use authorizations in schools and daycares. Additionally, thank you for holding a Federalism and UMRA consultation meeting on July 28, 2016 with state and local government groups on these potential changes.

Local governments and school systems have a vested interest in this rule since we both own and operate schools and daycare centers and share funding and budget responsibilities. While we share EPA's concern over the potential health risks of PCBs, we are concerned about the scope of the rulemaking and the unintended consequences that a tight compliance schedule may have on our local governments, schools, the teachers we employ, and the students we serve.

We have four principal concerns with the proposed rule:

- **The proposed rule is based on insufficient data**
- **EPA underestimates the costs for PCB removal in schools**
- **The proposed rule is duplicative of other federal efforts**
- **The proposed timeline for the rule's implementation is unworkable**

For these reasons, as discussed below, we recommend that EPA postpone further action on this rulemaking and take steps to accurately determine the scope of the problem and the costs to local governments and school districts before proceeding with a proposed rule.

The proposed rule is based on insufficient data

According to the EPA, 38 percent of PCB lighting fixtures in schools nationally are leaking. However, EPA used a data set that was derived from “several entities,” rather than from a nationwide survey. EPA’s limited data, however, runs counter to a 2014 survey done by the School Superintendents Association (AASA), Association of School Business Officials International (ASBO), and the National School Boards Association (NSBA). Over 1,200 superintendents, school business officials, and school board members indicated that it is unusual for a capacitor to leak PCBs, even if the ballast overheats and leaks the potting compound (which encapsulates the PCB capacitor). In fact, according to survey respondents, it is rare for PCBs to leak in school buildings at all.

The survey also indicated that lighting retrofits, including replacement of PCB light fixtures, have been completed in 55.2 percent of all school buildings constructed prior to 1980. An additional 31 percent indicated that some of their school buildings have gone through upgrades. Finally, in stark contrast with EPA’s data, only 2.1 percent of respondents reported having had any PCB-related incident in their school buildings, and several of those have already addressed the problem by removing all PCB-containing ballasts.

We believe the data in the 2014 AASA et al. survey is closer to the reality on the ground than the data used in EPA’s limited data set. **Therefore, we recommend that EPA undertake a new statistically valid nationwide survey of all schools and daycares before proposing a rule.**

The EPA underestimates the costs for PCB removal in schools

EPA’s analysis estimates that it will cost between \$153 million and \$263 million to remove PCB light fixtures from schools. Not only has EPA significantly overstated the problem, but we believe the agency has also significantly underestimated the anticipated costs for removing PCB-containing fluorescent light ballasts, since the proposal assumes that PCB removal can be completed by a school janitor or custodian.

Due to the complex nature of electrical systems, liability concerns and union contracts, the school district would likely have to hire certified electricians. This would significantly increase

costs, especially for school districts in rural areas, who would have to pay for certified electricians from outside the community.

Furthermore, EPA has not assessed PCB light fixture disposal costs and the potential need to ship the fixtures to one of the 50 PCB disposal facilities located across the country. The need for special handling will result in significant shipping costs, while creating additional risk, given the large number of PCB ballasts disposed of in a short period of time.

We urge EPA to recalculate their cost-benefit analysis to reflect the additional implementation costs this proposed rule may impose on local governments and school districts.

The proposed rule is duplicative of other federal efforts

We are concerned that EPA is undertaking a rulemaking that will be duplicative of a U.S. Department of Energy (DOE) rule that updates energy efficiency requirements, resulting in the removal of old fluorescent light ballasts, by 2020. **Instead of initiating a new rulemaking to accelerate this timetable, we believe that a better path forward is to work with local governments and school districts to incentivize early removal of PCB light fixtures.**

A good example of this partnership at work is DOE's Energy Efficiency and Conservation Block Grant Program (EECBG). Funded through the American Recovery and Reinvestment Act, local governments spent approximately \$1 billion on energy retrofits of their buildings. Approximately 86,000 facilities, including public buildings, were retrofitted. This is a prime example of a federal program supporting both energy efficiency and public health goals at the local level.

Our organizations would be glad to explore the best ways to incentivize PCB ballast removal projects in schools and local government-owned daycare centers with EPA.

The proposed timeline for rule's implementation is unworkable

Under this rulemaking, EPA is considering a two- or four-year compliance schedule, which will cause extreme hardship for local governments, school districts, and our schools.

While school districts are considered as special-purpose governments, they may be managed by local governments and/or funded through a portion of local government property taxes and fees. Even though the national economy has officially emerged from the recession, our nation's county and city economies have not fully recovered. According to NACo's County Economies report released in January, only 214 of the nation's 3,069 county economies have fully recovered to pre-recession economic conditions. Additionally, according to NLC's most recent City Fiscal Conditions report, as of 2015, almost eight years after the start of the recession, cities are operating at only 91.6 percent of 2006 revenues.

The recession has also had lasting impacts on school districts where school funding is still capped at approximately 2004 levels. This is despite new federal and state requirements and an expanding student base that is less affluent and has additional needs. Currently, school districts

have little to no room for new spending in their budgets. For example, to ensure that schools have enough qualified teachers and supporting staff, 80 to 85 percent of school budgets are spent on personnel and benefits. That leaves only 15 to 20 percent for facility projects, which are often budgeted and planned years in advance.

Additionally, facility funding often comes from local levies or bonds, which are targeted toward a specific project. That means that school districts cannot reallocate existing facility management funds to remove PCB ballasts without putting school districts in the difficult position of having to find funding from another part of their budget, such as eliminating teacher positions or student programs. Ultimately, this can undermine important educational attainment objectives.

Finally, the tight timeline under this rulemaking does not take into account school budget cycles. In the majority of the nation's school districts, the school year's budget is usually decided by winter of the previous year. In some school districts, the budget is planned several years in advance. A two or four year implementation schedule would be unfeasible for most school districts.

For these reasons, we recommend that EPA postpone initiation of a formal rule in order to assess and more accurately determine the scope of the problem and the fiscal impacts on local governments and school districts. Specifically, we ask EPA to: 1) clarify the number, location, and size of schools in their data set; 2) undertake a new statistically valid nationwide survey of schools and daycares to determine the true scope of the problem; 3) reassess the costs to local governments and school districts of complying with a potential rule, including proper disposal costs.

Thank you for the opportunity to submit comments and for considering the local perspective as you consider this rulemaking. If you have any questions, please do not hesitate to contact us: Judy Sheahan at USCM (jsheahan@usmayors.org), Carolyn Berndt at NLC (berndt@nlc.org), Julie Ufner at NACo (JUFner@naco.org), Mike Griffin at CEA (mgriffin@countyexecutives.org), Leslie Finnan at AASA (lfinnan@aasa.org), and Kimberly Richey at NSBA (krichey@nsba.org). Thank you for your consideration.

Sincerely,



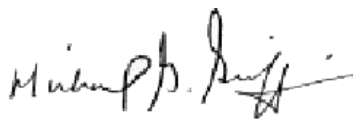
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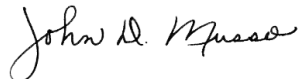
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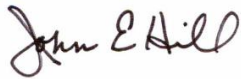
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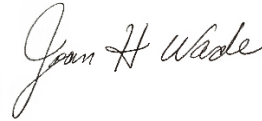
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