

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Steven C. Schlang 10/8/08  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2008-0094

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Washington Central Supervisory  
Union  
22 East View Lane  
Barre, VT 05641

Total Dollar Amount of Receivable \$ 17,145 Due Date: 10/29/08

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
1 Congress Street  
Suite 1100 - SEL  
Boston, MA 02114-2023

Steven C. Schlang  
Enforcement Counsel  
617-918-1773 (phone)  
617-918-1809 (fax)

RECEIVED  
OCT 03 2008  
EPA ORC  
Office of Regional Hearing Clerk

October 3, 2008

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street  
Boston, Massachusetts 02114-2023

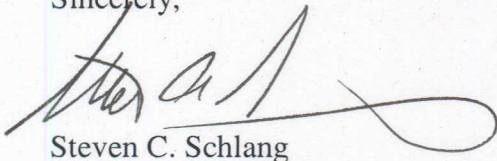
Re: In the Matter of: Washington Central Supervisory Union  
Docket Number: TSCA-01-2008-0094

Dear Ms. Santiago,

Enclosed please find for filing an original and one copy of the Consent Agreement and Final Order regarding the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,



Steven C. Schlang

cc: Bernard Lambek

**RECEIVED**  
OCT 3 2003  
EPA ORO  
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of: )  
)  
Washington Central Supervisory )  
Union )  
22 East View Lane )  
Barre, VT 05641 )  
)  
Respondent )  
)

Docket No. TSCA-01-2008-0094

**CONSENT AGREEMENT AND FINAL ORDER**

1. The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that Washington Central Supervisory Union (“Respondent” or “LEA”) violated Section 203(i) of the Title II of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2643(i), commonly known as Asbestos Hazard Emergency Response Act (“AHERA”), and the regulations promulgated at 40 C.F.R. Part 763, Subpart E. These allegations, if proven, constitute violations of TSCA Section 207(a)(3), 15 U.S.C. § 2647(a)(3), for which a penalty may be assessed pursuant to TSCA Section 207(a), 15 U.S.C. § 2647(a).

2. EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

**I. Preliminary Statement**

3. This is an administrative action for the assessment of monetary penalties pursuant to Section 207(a)(3) of AHERA, 15 U.S.C. § 2647(a)(3), for violations of Section 203(i) of AHERA, 15 U.S.C. § 2643. Section 207(a)(3) of AHERA, 15 U.S.C. § 2647(a)(3), states that any local educational agency (“LEA”) which fails to develop an asbestos management plan (“AMP”) pursuant to regulations promulgated under Section 203(i) of AHERA, 15 U.S.C. § 2643(i), shall be liable for civil penalties.

4. Under Section 207(a) of AHERA and inflationary adjustments authorized by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations set forth at 40 C.F.R. Part 19, an LEA is liable for penalties of up to \$6,500 for each day during which the violation continues. A “violation” is defined as a failure to comply with respect to a single school building. Therefore, the maximum penalty that may be assessed against an LEA for any and all violations in a single school building under AHERA is \$6,500 per day.

5. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO is the most appropriate means of resolving this matter without the expense of protracted and costly litigation.

6. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

**II. EPA FACTUAL FINDINGS**

7. The AHERA regulations require, in pertinent part, that the LEA keep a complete, updated copy of the AMP in the LEA’s central administrative office for each school under its control or direction and that the AMP be available for EPA inspection, pursuant to 40 C.F.R.

§ 763.93(g)(2). The AHERA regulations also require that the LEA keep a complete, updated copy of the AMP for each school in the respective school's administrative offices, pursuant to 40 C.F.R. § 763.93(3). Finally, the AHERA regulations require that the LEA notify parent, teacher, and employee organizations, in writing, of the availability of the AMP each school year, pursuant to 40 C.F.R. § 763.93(g)(4).

8. Respondent, located at 22 East View Lane, Barre, Vermont, is a "local educational agency" ("LEA") as defined at Section 202(7) of AHERA, 15 U.S.C. § 2642(7), and 40 C.F.R. § 763.83 and as such is subject to AHERA and the regulations promulgated thereunder.

9. Each building described in paragraphs 10 through 15 below is a "structure suitable for use as a classroom, ... laboratory, library, school eating facility, ... gymnasium or ... other facility used for the instruction or housing of students or for the administration of educational or research programs" and is therefore a "school building," as defined by 40 C.F.R. § 763.83.

10. Respondent uses 22 East View Lane, Barre, Vermont, as an administration building. The building is, therefore, used as a school building.

11. Respondent uses the Berlin Elementary School ("Berlin") at 372 Paine Turnpike, N. Berlin, Vermont, as a school building.

11. Respondent uses the Calais Elementary School ("Calais") at 321 Lightening Ridge Road, Plainfield, Vermont, as a school building.

12. Respondent uses the Doty Memorial School ("Doty") at P.O. Box 24 Calais Road, Worcester, Vermont, as a school building.

13. Respondent uses the East Montpelier Elementary School ("East Montpelier") at 665 Vincent Flats Road, Montpelier, Vermont, as a school building.

14. Respondent uses the Rumney Memorial School ("Rumney") at 433 Shady Rill Road, Middlesex, Vermont, as a school building.
15. Respondent uses the U-32 Middle and High School ("U-32") at 930 Gallison Hill Road Montpelier, Vermont, as a school building.
16. On or about September 1, 2006, representatives of EPA conducted an inspection at Calais, East Montpelier, and U-32 to determine the LEA's compliance with 40 C.F.R. § 763.93(g)(3) and found that the LEA failed to maintain a complete, updated copy of an AMP available for EPA inspection for Calais, East Montpelier, and U-32 at each respective school as required by 40 C.F.R. § 763.93(g)(3).
17. On or about August 31, 2006, representatives of EPA conducted an inspection at the administrative office of the LEA to determine the LEA's compliance with 40 C.F.R. § 763.93(g)(2) and found that the LEA failed to maintain a complete, updated copy of any school building's AMP available for EPA inspection as required by 40 C.F.R. § 763.93(g)(2).
18. On or about April 1, 2008, EPA sent an information request letter to the LEA which included a request for complete and updated copies of AMPs for each school building described in paragraphs 10 through 15 above.
19. On or about April 23, 2008, the LEA responded to EPA's information request letter with copies of AMPs for each school listed in paragraphs 10 through 15 above.
20. Based on a review of the AMP's, EPA's inspections, and subsequent investigation, the LEA failed to notify parent, teacher, and employee organizations of the availability of the AMPs each school year, as required by 40 C.F.R. § 763.93(g)(4).

### **III. EPA CONCLUSIONS OF LAW**

21. The LEA's conduct described in Section II above, violates 40 C.F.R.

§ 763.93(g), for at least the following schools: Berlin, Calais, Doty, East Montpelier, and U-32.

22. The LEA violated 40 C.F.R. §§ 763.93(g)(1) and 763.93(g)(2) and AHERA by failing to keep a complete, updated copy of the AMP in the LEA's central administrative office for each school under its control or direction and failing to make the AMP available for EPA inspection.

23. The LEA violated 40 C.F.R. § 763.93(g)(3) by failing to keep a complete, updated copy of the AMP for each school in the respective school's administrative offices.

24. The LEA violated 40 C.F.R. § 763.93(g)(4) by failing to notify parent, teacher, and employee organizations, in writing, of the availability of the AMP each school year.

25. The violations described in paragraphs 22 through 24 above constitute a failure to develop a management plan pursuant to 40 C.F.R. § 763.93(g), for which a penalty may be assessed pursuant to Section 207(a) of AHERA, 15 U.S.C. § 2647(a), and the *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act* (January 31, 1989) ("ERP").

#### **IV. TERMS OF SETTLEMENT**

26. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors and assigns.

27. Respondent stipulates that EPA has jurisdiction over the subject matter described in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue; and, for purposes of this proceeding only, and without admitting or denying the facts and violations described in this CAFO, Respondent consents to its terms.

28. Respondent hereby waives its right to contest any issue of law or fact set forth in this CAFO and to appeal the Final Order accompanying this Consent Agreement.

29. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO.

30. In accordance with the penalty criteria in AHERA § 207(c), 15 U.S.C. § 2647(c), and in the ERP, and in light of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is \$17,145.

31. Respondent has submitted financial information ("Financial Information") demonstrating that it has spent \$19,570 in compliance costs since August 31, 2006. Pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), and the ERP, EPA has determined such compliance costs constitute full payment of the penalty and that no further payment is necessary.

32. By signing this CAFO, Respondent certifies that it has addressed the violations described in this CAFO, and the Notice of Noncompliance ("NON"), issued by EPA on August 18, 2008, and is currently in full compliance with AHERA.

33. The provisions of this CAFO are conditioned upon the veracity and completeness of the Financial Information provided to EPA by Respondent. By signing this CAFO, Respondent certifies that the Financial Information it provided to EPA regarding the costs incurred to come into compliance subsequent to August 31, 2006, is true, accurate, and complete. If the Financial Information submitted by Respondent is subsequently determined by EPA to be false or inaccurate in any material respect, this CAFO shall be null and void and shall not in any way foreclose the EPA's right to pursue monetary penalties for the violations alleged herein and/or to seek any other relief available to EPA.

34. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable



provisions of federal, state, and local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

35. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA, 15 U.S.C. § § 2601 et seq., or any regulations promulgated thereunder.

36. Each party shall bear its own costs and fees in this proceeding, including attorneys fees, and Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

37. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

FOR WASHINGTON CENTRAL SUPERVISORY UNION

Name Robert Brook

Date Sept. 22, 2008

Title superintendent

Washington Central Supervisory Union

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_

Joel Blumstein  
Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I

9/26/08  
\_\_\_\_\_

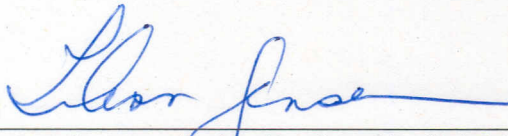
Date

In the Matter of Washington Central Supervisory Union  
Docket No. TSCA-01-2008-0094

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen, Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

9/29/08  
Date

**In the Matter of: Washington Central Supervisory Union  
Docket Number TSCA-01-2008-0094**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order and Memorandum to LeAnn Jensen has been sent to the following persons on the date noted below:

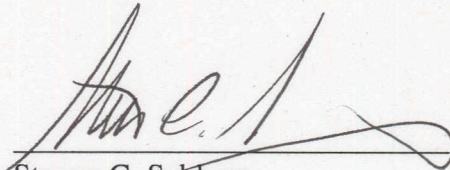
Original and one copy  
hand delivered:

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Copy by Certified Mail-  
Return Receipt Requested

Attorney Bernard Lambek  
Zalinger, Cameron & Lambek, P.C.  
140 Main Street  
P.O. Box 1310  
Montpelier, Vermont 05601-1310

Date: 10/3/08



Steven C. Schlang

Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
tel: (617) 918-1773  
fax: (617) 918-0773