

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for

Steven C. Schlang
Name of Case Attorney

9/30/10
Date

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

Case Docket Number TSCA-01-2010-0019

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:

Monadnock Waldorf School
98 South Lincoln St.
Keene, NH 03431

Total Dollar Amount of Receivable \$ 12,573 - 8,667 - Remaining
Due Date: 10/13/10

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 1,467 on 10/13/10
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ 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
5 Post Office Square Suite 100
Boston, MA 02109

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

RECEIVED
SEP 14 2010
EPA ORC WS
Office of Regional Hearing Clerk

September 14, 2010

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square
Mail Code – ORA18-1
Boston, Massachusetts 02109-3912

Re: In the Matter of: Monadnock Waldorf School
Docket Number: TSCA-01-2010-0019

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of the Consent Agreement and Final Order and Memorandum to Jill T. Metcalf, Acting Regional Judicial Officer, regarding the above-matter.

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

Sincerely,



Steven C. Schlang

cc: Alice S. Mahar

In the Matter of: Monadnock Waldorf School
Docket Number TSCA-01-2010-0019

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order and Memorandum to Jill T. Metcalf has been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

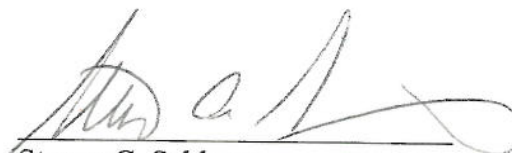
Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
5 Post Office Square
Mail Code ORA18-1
Boston, MA 02109-3219

Copy by Certified Mail-
Return Receipt Requested

Alice S. Mahar
Administrator
Monadnock Waldorf School
98 South Lincoln Street
Keene, NH 03431

Date:

September 14, 2010



Steven C. Schlang
Office of Environmental Stewardship.
U.S. EPA, Region I
Five Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3219
tel: (617) 918-1773
fax: (617) 918-0773

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION I

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

Monadnock Waldorf School)
98 South Lincoln Street)
Keene, New Hampshire 03431)

Respondent)

Docket No.: TSCA-01-2010-0019

RECEIVED
SEP 14 2010
EPA ORC WJS
Office of Regional Hearing Clerk

CONSENT AGREEMENT AND FINAL ORDER

1. The Complainant, United States Environmental Protection Agency, Region 1 ("EPA") alleges that Monadnock Waldorf School ("Respondent" or local education agency 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(i). Section 207(a)(3) of AHERA, 15 U.S.C. § 2647(a)(3), states that any 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. Pursuant to Section 207(a) of AHERA, 15 U.S.C. § 2647(a), 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 \$7,500 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 at a single school building under AHERA is \$7,500 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 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. Pursuant to 40 C.F.R. § 763.93(g)(2), 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)(3), 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. Finally, pursuant to 40 C.F.R. § 763.93(g)(4), the AHERA regulations require that the LEA notify parent, teacher, and employee organizations, in writing, of the availability of the AMP each school year.

8. Respondent, located at 98 South Lincoln Street, Keene, New Hampshire, is a “local education agency” (“LEA”) as defined in Section 202(7) of AHERA, 15 U.S.C. § 2642(7), and at 40 C.F.R. § 763.83 and is subject to AHERA and the regulations promulgated thereunder.

9. Each building described in Paragraphs 10 through 12 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 administration of educational or research programs” and is therefore a “school building,” as defined by 40 C.F.R. § 763.83.

10. Respondent uses 98 South Lincoln Street, Keene, New Hampshire as its central administration building. The building is, therefore, used as a school building.

11. Respondent also uses 98 South Lincoln Street, Keene, New Hampshire (“98 South Lincoln Street”) as the Monadnock Waldorf Elementary School. The building is, therefore, used as a school building.

12. Respondent uses 424 Old Walpole Road, Keene, New Hampshire (“424 Old Walpole Road”) as the Monadnock Waldorf Nursery-Kindergarten School. The building is, therefore, used as a school building.

13. On or about May 12, 2008, duly designated representatives of EPA, after presenting appropriate credentials and written notice, conducted an inspection at the Monadnock Waldorf School to determine compliance with AHERA and the regulations promulgated at 40 C.F.R. § 763, Subpart E (“EPA’s inspection”).

14. During EPA’s inspection, the inspection team learned that Respondent failed to keep a copy of the AMP at Respondent’s school building located at 98 South Lincoln Street, Keene, New Hampshire. Respondent, therefore, failed 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 to

ensure that the AMP be available for EPA inspection, pursuant to 40 C.F.R. § 763.93(g)(2).

15. During EPA's inspection, the inspection team learned that Respondent failed to maintain a copy of the AMP at the Respondent's Nursery-Kindergarten School building located at 424 Old Walpole Road, Keene, New Hampshire. Based on EPA's inspection and subsequent investigation, therefore, Respondent failed to 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(g)(3).

16. Based on EPA's inspection and subsequent investigation, Respondent failed to notify parent, teacher, and employee organizations, in writing, of the availability of the AMP each school year, pursuant to 40 C.F.R. § 763.84(f) and 40 C.F.R. § 763.93(g)(4).

III. EPA Conclusions of Law

17. Respondent's conduct described in Section II above, violates 40 C.F.R. § 763.93(g) for the following schools: Monadnock Waldorf Elementary School, 98 South Lincoln Street, Keene, New Hampshire, and Monadnock Waldorf Nursery-Kindergarten School, 424 Old Walpole Road, Keene, New Hampshire.

18. Respondent violated 40 C.F.R. § 763.93(g)(2) 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.

19. Respondent 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.

20. Respondent violated 40 C.F.R. § 763.84(f) and 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.

21. The violations described in Paragraphs 17 through 20 above constitute a failure to develop a management plan pursuant to 40 C.F.R. § 763.93(a), 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 Policy for the Asbestos Hazard Emergency Response Act* (January 31, 1989) (“ERP”).

IV. Terms of Settlement

22. 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.

23. 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. Without admitting or denying the factual and legal allegations contained in the CAFO, Respondent consents to the terms of the CAFO.

24. 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.

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

A) Penalty and Payment

26. 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 \$12,573.

27. Respondent has submitted financial information demonstrating that it has spent \$3,906 in compliance costs since May 12, 2008. Pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), and the ERP, EPA has determined such compliance costs constitute a partial credit to

be offset against the penalty ("Penalty Credit"). Accordingly, EPA hereby agrees that, after applying \$3,906 as an off-set, the remaining penalty is \$8,667 ("Remaining Penalty").

28. In light of the Penalty Credit in Paragraph 27 above and additional compliance expenditures of \$7,200 anticipated by Respondent, as specified in Section IV(B) below, Respondent shall pay a civil penalty of \$1,467 ("Initial Penalty Amount"), no later than thirty (30) days after the effective date of this CAFO. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk. Payment of the Initial Penalty Amount shall be made by bank, cashier's, or certified check. The check shall be made payable to the order of the "Treasurer of the United States of America." The check shall state on the reverse side, "For Deposit Into the Asbestos Trust Fund, 20 U.S.C. § 4022." Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter. Respondent shall mail the check by certified mail, return receipt requested, to the following address:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

29. Copies of the transmittal letter and the bank, cashier's, or certified check, as required to be submitted to EPA pursuant to Paragraph 28 above shall also be provided to the following persons:

Wanda I. Santiago
Regional Hearing Clerk

Mail Code - ORA18-1
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Steven Schlang
Senior Enforcement Counsel
Mail Code - OES04-4
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

B) Future Compliance Activities and Costs

30. Respondent has submitted documentation demonstrating that it intends to incur at least \$7,200 in future costs to comply with AHERA ("Future Compliance Costs") over the course of three (3) years after the Effective Date of the CAFO. Specifically, Respondent intends to complete the following AHERA compliance activities (collectively, "Future Work"), as described below:

(a) 424 Old Walpole Road

- i) By July 31, 2010: (1) conduct an AHERA re-inspection of the building; (2) fully update an AHERA management plan for the building; and (3) conduct further sampling to determine whether there is further presence of asbestos in the building. Respondent estimates that the total cost for these activities will be \$2,700.
- ii) On or before January 31, 2011, conduct the first of six AHERA surveillance inspections and conduct each subsequent surveillance inspection at

six month intervals until July 31, 2013. Respondent estimates that the total cost for the six surveillance inspections will be \$1,200; and

iii) By December 31, 2013, conduct a complete 3-year AHERA re-inspection. The cost for the re-inspection is estimated to be \$1,200.

b) 98 South Lincoln Street

i) By July 31, 2010, fully update its AHERA management plan. Respondent estimates that the cost for the update will be \$300;

ii) On or before January 31, 2011, conduct the first of six AHERA surveillance inspections and conduct each subsequent surveillance inspection at six month intervals until July 31, 2013; and

iii) By December 31, 2013, conduct a 3-year AHERA re-inspection.

Respondent estimates that the total cost for the six surveillance inspections and the 3-year AHERA re-inspection will be \$1,800.

31. Pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the ERP, and the terms of this CAFO, the Respondent may seek EPA's approval for crediting the Future Compliance Costs specified in Paragraph 30 above against the Remaining Penalty, subject to the requirements and conditions in Paragraph 32-37 below, including all reporting and documentation (accounting) requirements relating to completion of the Future Work. EPA, upon review of documentation and cost information, shall have sole discretion in determining whether the Future Compliance Costs incurred by Respondent and documented under this CAFO are costs that may be credited against the Remaining Penalty. Future Compliance Costs that may be credited against the Remaining Penalty include only direct costs incurred by Respondent to comply with AHERA using accredited inspectors and others properly trained to conduct such AHERA compliance

work. Under this CAFO, Future Compliance Costs that may be credited against the Remaining Penalty may not include Respondent's overhead, additional employee time and salary, administrative expenses, legal fees, contractor oversight costs, operation and maintenance costs, and any costs associated with preparing documents pertaining to the reporting requirements specified in this CAFO.

C) Reporting

32. For EPA to consider the eligibility of any Future Compliance Costs incurred by Respondent as potential credit against the Remaining Penalty, Respondent shall provide the following information to EPA by the deadlines indicated below:

- a. No later than August 15, 2010, submit documentation demonstrating completion of the activities specified in Subparagraphs 30(a)(i) and (b)(i), above. In addition, Respondent shall submit copies of any invoices, purchase orders, cancelled checks, and/or other cost information demonstrating any costs incurred by Respondent to complete the activities;
- b. No later than February 15, 2011, and, for each subsequent surveillance inspection, no later than 15 days after completing each 6-month surveillance inspection specified in Subparagraphs 30(a)(ii) and (b)(ii), submit documentation demonstrating completion of the 6-month surveillance inspection. In addition, Respondent shall submit copies of any invoices, purchase orders, cancelled checks, and/or other cost information demonstrating any costs incurred by Respondent to complete each 6-month surveillance inspection;
- c. No later than January 15, 2014, after completing the AHERA re-inspections specified in Subparagraphs 30(a)(iii) and (b)(iii), submit documentation demonstrating completion of the AHERA re-inspections. In addition, Respondent shall submit copies of

any invoices, purchase orders, cancelled checks, and/or other cost information demonstrating any costs incurred by Respondent to complete the re-inspection activities.

d. Completion Report and Cost Documentation: No later than January 15, 2014, Respondent shall submit a Completion Report to EPA, containing the following information:

- (i) A description of the AHERA compliance activities completed and descriptions of any additional AHERA compliance-related activities that were completed by Respondent;
 - (ii) Copies of any clearance examination results, asbestos sampling, and/or data not already submitted to EPA relating to the completion of Future Work;
 - (iii) Itemized costs of goods and services used to complete the Future Work activities or any additional AHERA compliance-related activities that were completed by Respondent, documented by copies of invoices, purchase orders, canceled checks, and/or other cost information that specifically identify and itemize the individual costs incurred by Respondent for such goods and services;
 - (iv) Certification by Respondent that the individuals who performed the AHERA compliance-related activities were properly accredited under AHERA to perform such work, along with training documentation (e.g., training certificates in effect for the relevant time period(s)) in support thereof;
 - (v) Certification by Respondent that it completed the AHERA compliance-related activities in compliance with the requirements of AHERA and this CAFO;
- and,

(vi) A description of any problems encountered in completing Future Work and the solutions thereto.

e. In itemizing costs in the Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible compliance-related costs. Where the Completion Report includes costs not eligible for AHERA compliance-related activities, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes, without limitation, invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

33. The completion of AHERA compliance-related activities discussed in this CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of AHERA and any other federal, state or local law.

34. Respondent shall submit all reports required by Paragraph 32 above to EPA, as follows:

Hugh Pilgrim, Compliance Inspector
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code OES05-4
Boston, MA 02109-3912

For all documents or reports submitted to EPA pursuant to this CAFO, Respondent shall sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law 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 is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

35. Respondent agrees that EPA and its representatives, contractors, consultants, and agents may inspect the buildings at 98 South Lincoln Street and 424 Old Walpole Road, Keene, New Hampshire, at any time in order to confirm that any and all compliance activities are being undertaken in conformance with this Agreement. This Agreement in no way limits or affects any right of entry and inspection held by EPA under TSCA or any other laws or regulations.

36. Respondent shall maintain all documents pertaining to the Future Work performed and Future Compliance Costs expended pursuant to this CAFO, including but not limited to: all logs, inspection notes, contracts, bulk sampling data, invoices, canceled checks, and contractor reports. On request by EPA, Respondent shall provide copies of such documentation to EPA not more than fourteen (14) days after the request for information is made by EPA.

37. EPA's acceptance of Completion Report:

(a) After receipt of the Completion Report described in Paragraph 32(d), EPA will notify the Respondent, in writing, and:

(i) identify any deficiencies in the Completion Report itself and grant Respondent

additional time to correct any deficiencies, not to exceed thirty (30) days; or

(ii) indicate that the AHERA compliance-related activities have been completed satisfactorily; or

(iii) determine that all or any portion of the Future Work has not been completed

satisfactorily and seek stipulated penalties in accordance with Paragraph 38

herein.

(b) If EPA determines Respondent has incurred less than \$7,200 in Future Compliance Costs eligible for credit against the Remaining Penalty under this CAFO, Respondent shall pay, as a stipulated penalty, an amount (the "Noncredited Penalty Amount") equal to the difference between \$7,200 and the actual amount of Future Compliance Costs incurred by Respondent and determined by EPA to be eligible for penalty credit under this CAFO. Respondent shall pay interest on any Noncredited Penalty Amount determined by EPA to be due and owing hereunder in accordance with Paragraph 48 below, with such interest accruing from the effective date of the CAFO to the date of payment of the Noncredited Penalty Amount.

38. Stipulated Penalties:

- a) If Respondent fails to pay the Initial Penalty Amount within 30 days of the Effective Date, Respondent shall pay \$200 per day until the Initial Penalty Amount is paid in full;
- b) If Respondent fails to pay the Noncredited Penalty Amount (plus interest) within 15 days of receipt of a written demand by EPA, Respondent shall pay \$200 per day until the Noncredited Penalty Amount (plus interest) is paid in full;
- c) If Respondent fails to complete the Future Work activities specified in Subparagraphs 30(a)(i) and 30(b)(i) above, by July 31, 2010, Respondent shall pay a stipulated penalty of \$200 per day until that work is completed;
- d) If Respondent fails to complete the Future Work activities specified in Subparagraphs 30(a)(ii) and 30(b)(ii) above, by January 31, 2011, July 31, 2011, or by any subsequent 6-month deadline, Respondent shall pay a stipulated penalty of \$50 per day for each such deadline missed, until that applicable surveillance inspection is

completed;

e) If Respondent fails to complete the Future Work activities specified in Subparagraphs 30(a)(iii) and 30(b)(iii) above, Respondent shall pay a stipulated penalty of \$100 per day from December 13, 2013, until the work is completed; and

f) If Respondent fails to provide any of the reports specified in Paragraph 32, Respondent shall pay a stipulated penalty of \$50 per day for each such report from the date each report was due until such report is received by EPA.

39. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity, even if no notice of such violation is sent to Respondent.

40. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA. Respondent shall pay interest on any stipulated penalty, or portion thereof, which is not paid within fifteen (15) days of EPA's written demand. Payment of stipulated penalties and interest, if any, shall be made by certified or cashier's check payable to "Treasurer, United States of America" in accordance with the procedures specified in Paragraphs 28 and 29 above.

41. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

42. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

43. This CAFO shall not relieve Respondent of its obligation to comply with all applicable

provisions of federal, state or local law.

44. If any event occurs causes or may cause delays in the completion of the Future Work Activities detailed in Section IV(B) of this CAFO, Respondent shall notify EPA in writing not more than seven (7) days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of any obligation under this CAFO based on such incident.

45. If EPA agrees that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, EPA shall stipulate to such extension of time.

46. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent, in writing, of EPA's decision and any delays in the completing such requirements shall not be excused.

47. The burden of proving that any delay is caused by circumstances entirely beyond the

control of Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or for extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

48. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. 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 addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d).

49. The civil penalty under Paragraphs 26-28 above, any penalty due and owing under Paragraphs 37 and 38 above, and any interest, nonpayment penalties and/or charges as described in Paragraphs 48 above shall represent penalties assessed by EPA and shall not be deductible for purposes of federal, state, or local taxes.

50. 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.

51. 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.

52. 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.

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

FOR MONADNOCK WALDORF SCHOOL:

Name: Alice S. Mahan

Date: 12 Aug 10

Title: Administrator
Monadnock Waldorf School

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1:



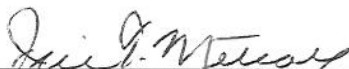
Date: Sept. 10, 2010

Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Jill T. Metcalf, Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Sept. 13, 2010
Date

MEMORANDUM

To: Jill T. Metcalf, Acting Regional Judicial Officer

From: Steven Schlang, Senior Enforcement Counsel

Re: Consent Agreement and Final Order – *In the Matter of: Monadnock Waldorf School*,
Docket No. TSCA-01-2010-0019

Date: September 7, 2010

This memo transmits for your approval and signature a Consent Agreement and Final Order in the matter of Monadnock Waldorf School (“Monadnock”), resolving alleged violations of Sections 203(i) and 207 of Title II of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2643(i) and 2647, commonly known as the Asbestos Hazard Emergency Response Act or “AHERA,” and the AHERA regulations at 40 C.F.R. Part 763, Subpart E.

The CAFO is the result of pre-filing negotiations between EPA and Monadnock (the “Parties”) and will both initiate and resolve an enforcement action based on allegations that Monadnock violated AHERA by failing to develop an asbestos management plan (“AMP”) and, in particular, failing to: (1) maintain a complete, updated copy of the AMP in the school’s central administrative offices covering all school buildings; (2) maintain a complete, updated copy of the AMP for each school in the respective school’s administrative offices; and (3) provide annual, written notification to parents, teachers, and employee organizations of the AMP’s availability.

In light of case-specific facts and the penalty factors listed in Section 207(c) of AHERA, EPA determined that \$12,573 was an appropriate penalty for the violations. However, based on information from Monadnock showing that the school’s total compliance costs incurred, or to be incurred, subsequent to EPA’s May 12, 2008 inspection are likely to be \$11,106, under Section 207(a) of AHERA, the CAFO only requires Monadnock to pay an up-front cash penalty of \$1,467 within 30 days of the effective date. Under the settlement terms, in the event Monadnock incurs (or documents) compliance costs below anticipated levels, the CAFO requires further penalty payment within specified deadlines.

Please note that the CAFO includes past due dates of July 31, 2010 and August 15, 2010 for certain work and reporting requirements, respectively. Because EPA confirmed that Respondent has met such obligations by the deadlines specified, however, no further revisions to, or approval of, the CAFO terms have been sought between the Parties.

This settlement comports with applicable EPA policy and guidance, including the January 31, 1989 *Interim Enforcement Response Policy for the Asbestos Hazard Emergency Response Act* (“ERP”).

cc: Alice Mahar, Administrator, Monadnock Waldorf School