

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE: :  
: :  
Baltimore City Public School System : DOCKET NO: TSCA-03-2009-0133  
200 E. North Avenue : :  
Baltimore, Maryland 21202 : :  
: CONSENT AGREEMENT  
**Respondent** :  
:

**CONSENT AGREEMENT**

**I. Preliminary Statement**

This Consent Agreement ("CA"), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Baltimore City Public School System. This CA includes the assessment of a civil penalty against Baltimore City Public School System ("Respondent"), because it is a local education agency liable for violations which occurred at City Neighbors Charter School, Coppin Academy High School, Empowerment Academy, Inner Harbor East Academy for Young Scholars, Midtown Academy, Inc., and Northwood Appold Community Academy (the "Facilities"), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641 to 2656 ("TSCA AHERA"). This action is brought in accordance with TSCA AHERA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40

C.F.R Part 22, with specific reference to the provisions set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of TSCA AHERA and the federal regulations implementing TSCA AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations of TSCA AHERA alleged herein.

## **II. General Provisions**

1. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.

7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, the Facilities are in compliance with the provisions of TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees.
10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
11. By signing and executing this CA, Respondent certifies that it has already spent at least sixty-five thousand fifty-two dollars (\$65,052.00) since the Maryland Department of the Environment's ("MDE") May 18 to December 7, 2006, inspections for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all supporting cost documentation and information.
12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent.

### **III. EPA's Findings of Fact and Conclusions of Law**

13. Complainant has determined that Respondent has violated requirements of TSCA AHERA and the federal regulations implementing TSCA AHERA set forth at 40 C.F.R. Part 763 Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following

findings of fact and conclusions of law.

14. Respondent, Baltimore City Public School System, is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA AHERA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of TSCA AHERA.
15. The Facilities, City Neighbors Charter School, located at 4301 Raspe Avenue in Baltimore, MD; Coppin Academy High School, located at 2500 W. North Avenue in Baltimore, MD; Empowerment Academy, located at 851 Braddish Avenue in Baltimore, MD; Inner Harbor East Academy for Young Scholars, located at 200 N. Central Avenue in Baltimore, MD; Midtown Academy, Inc., located at 1398 W. Mount Royal Avenue in Baltimore, MD; and Northwood Appold Community Academy, located at 4417 Loch Raven Boulevard in Baltimore, MD, are "schools" as that term is defined at Section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.
16. The Facilities are "school buildings" as that term is defined at Section 202(13) of TSCA AHERA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
18. 40 C.F.R. § 763.85(a)(2) provides, with exceptions not relevant to these proceedings, that any building leased or acquired by local education agencies on or after October 12, 1988 to be used as a school building shall be inspected to identify all locations of friable and non-friable asbestos-containing building material (“ACBM”).
19. From May 18 to December 7 of 2006, authorized representatives of the MDE, conducted inspections at the Facilities pursuant to TSCA.
20. During the inspections, the MDE representative found that Respondent had failed to have an initial inspection conducted at Coppin Academy High School to determine whether there was any ACBM located in the Facility prior to its use as a school.
21. By failing to conduct an initial inspection for ACBM at the Facility, Respondent violated the requirements of 40 C.F.R. § 763.85(a)(2) and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. 40 C.F.R. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed asbestos-containing building material (“ACBM”) in each

school building that they lease, own, or otherwise use as a school building.

24. During the inspections, the MDE representatives found that Respondent had not been conducting reinspections every 3 years at Midtown Academy, Inc., since 2002.
25. By failing to conduct reinspections for ACBM once every 3 years at the Facility, Respondent violated the requirements of 40 C.F.R. § 763.85(b)(1) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1).

### COUNT III

26. The allegations contained in Paragraphs 1 through 25 are incorporated herein by reference.
27. 40 C.F.R. § 763.93(g)(3) provides that a school under the LEA authority must maintain in its administrative office a complete, updated copy of the management plan for that school, and make the plan available for inspection without cost or restriction.
28. During the inspections, the MDE representatives found that Respondent had failed to make the management plans available for inspection at Empowerment Academy and Midtown Academy, Inc.'s administrative offices as required pursuant to 40 C.F.R. § 763.93(g)(3).
29. By failing to make the management plan available for inspection at the Facilities' administrative offices, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(3) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

### COUNT IV

30. The allegations contained in Paragraphs 1 through 29 are incorporated herein by

reference.

31. 40 C.F.R. § 763.93(g)(4) provides that at least once each school year, the LEA shall notify in writing parents, teachers, and employee organizations of the availability of the management plan for review.
32. During the May 18 to December 7, 2006 inspections, the MDE representatives found that Respondent had failed to send annual notifications to parents, teachers, and employee organizations about the availability of the management plans at City Neighbors Charter School, Inner Harbor East Academy for Young Scholars, and Northwood Appold Community Academy as required pursuant to 40 C.F.R. § 763.93(g)(4).
33. By failing to send annual notifications to parents, teachers, and employee organizations about the availability of the management plans, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

#### **IV. Settlement Recitation**

34. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), for Respondent's TSCA AHERA violations. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of thirty-five thousand nine hundred dollars (\$35,900.00) is appropriate.

35. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), *i.e.*, the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act* ("ERP"), dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.
36. Respondent certifies that it has spent sixty-five thousand fifty-two dollars (\$65,052.00) since MDE's May 18 to December 7, 2006, inspections to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of thirty-five thousand nine hundred dollars (\$35,900.00) of the civil penalty assessed against the Respondent.
37. Respondent consents to the assessment of a thirty-five thousand nine hundred dollar (\$35,900.00) civil penalty with a cash component of zero (\$0) dollars.

#### **V. Reservation of Rights**

38. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the



environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA AHERA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

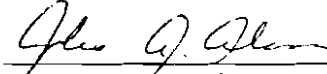
#### **VI. Effective Date**

39. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

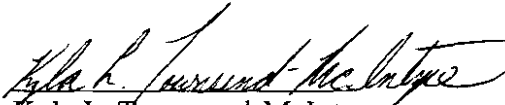
**For Respondent:**

5/5/09  
Date

  
Dr. Andres A. Alonso  
Chief Executive Officer

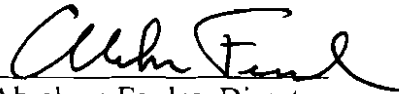
**For Complainant:**

05/13/2009  
Date

  
Kyla L. Townsend-McIntyre  
Enforcement Official

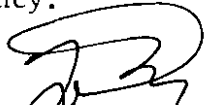
Accordingly I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

6/4/09  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division

Approved for form and legal sufficiency.

4/29/09  
Date

  
Frank C. Derr, Associate Counsel  
Baltimore City Board of  
School Commissioners

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**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

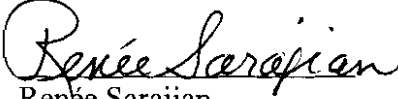
NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of thirty-five thousand nine hundred dollars (\$35,900.00), but that the cash component of that civil penalty will be zero (\$0).



In accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), the thirty-five thousand nine hundred dollar (\$35,900.00) civil penalty assessed against the Respondent is hereby remitted.

The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

6/8/09  
Date

  
Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

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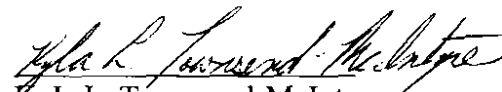
RESPONDENT.

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):

Alice Watson, Director of Health and Safety  
Baltimore City Public School System  
200 E. North Avenue, Room 407A  
Baltimore, Maryland 21202

06/08/2009  
Date

  
Kyla L. Townsend-McIntyre

Enforcement Officer

U.S. Environmental Protection Agency, Region III