

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

IN RE:

West Nottingham Academy
1079 Firetower Road
Colora, Maryland 21917-5556

Respondent

West Nottingham Academy
1079 Firetower Road
Colora, Maryland 21917-5556

Facility

Docket No: TSCA-03-2011-0040

CONSENT AGREEMENT

REGULATORY HEARING CLERK
EPA REGION III PHILA, PA

2011 SEP 29 AM 11:33

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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, 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 West Nottingham Academy. This CA includes the assessment of a civil penalty against West Nottingham Academy ("Respondent"), because it is a local education agency liable for a violation which occurred at West Nottingham Academy, located at 1079 Firetower Road, Colora, Maryland (the "Facility"), pursuant to the Toxic Substances Control Act ("TSCA," Subchapter II, (the Asbestos Hazard Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641 to 2656 ("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 a violation 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 violation 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 Facility is 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 ten thousand two hundred dollars (\$10,200) since MDE's March 19, 2008 inspection for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with §207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), and 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 a requirement 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, West Nottingham Academy, 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 the owner of a nonpublic, non-profit elementary, or secondary school building, including the Facility and as such, is responsible for ensuring that the facility is in compliance with the requirement of TSCA AHERA.
15. The Facility, West Nottingham Academy, located at 1079 Firetower Road, Colora Maryland, is a "school" as that term is defined at section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40C.F.R. § 763.83.
16. The Facility is a "school building" as that term is defined at Section 202(13) of TSCA, 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 § 763.93(g)(4), requires, *inter alia*, that local education agency shall notify in writing parent, teacher, and employee organizations of the availability of management plans and shall include a description of steps taken to notify such organizations, and a dated copy of the notification.
19. During the inspection conducted by MDE on March 19, 2008, the duly authorized inspector observed that the Respondent had not provided annual written notification to parents, teachers, and/or employee organizations at each facility.
20. Respondent's failure to provide the annual notification at the facility is a violation of 40 C.F.R. § 763.93(g)(4).

IV. Settlement Recitation

21. 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 violation. In full settlement of the violation 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 six thousand five hundred dollars (\$6,500) is appropriate.
22. 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.
23. Respondent certifies that it has spent ten thousand two hundred dollars (\$10,200) since MDE's March 19, 2008 inspection 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 six thousand five hundred

dollar (\$6,500) of the civil penalty assessed against the Respondent.

24. Respondent consents to the assessment of a six thousand five hundred dollar (\$6,500) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

25. 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.

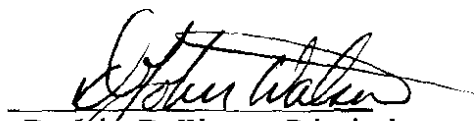
VI. Effective Date

26. 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.

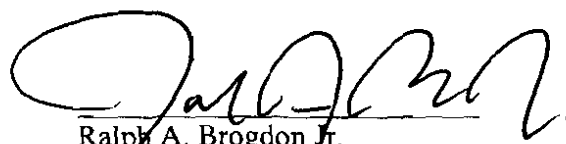
For Respondent:

9/23/2011
Date


Dr. John D. Watson, Principal
West Nottingham Academy

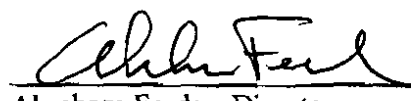
For Complainant:

9/27/2011
Date


Ralph A. Brogdon Jr.
Enforcement Officer

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

9/28/11
Date


Abraham Ferdas, Director
Land and Chemicals Division



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

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Respondent

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Facility

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 Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent is assessed a civil penalty of six thousand five hundred dollars (\$6,500), but that the cash component of that civil penalty will be zero dollars (\$0).

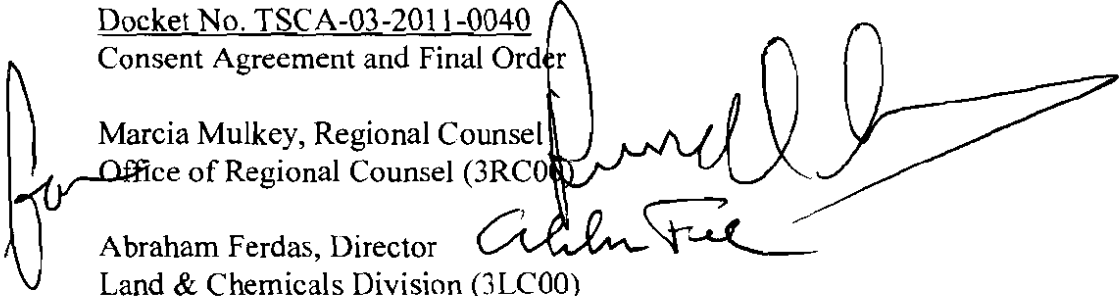

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), six thousand five hundred (\$6,500) civil penalty assessed against the Respondent is hereby remitted. The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

9/29/11
Date

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Subject: Toxic Substances Control Act
West Nottingham Academy
Docket No. TSCA-03-2011-0040
Consent Agreement and Final Order

From: Marcia Mulkey, Regional Counsel
Office of Regional Counsel (3RC00)

Abraham Ferdas, Director
Land & Chemicals Division (3LC00)


To: Rcnéc Sarajian, Regional Judicial Officer
Office of Regional Counsel (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and .18(b)(2), in settlement of alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 201 *et seq.*, by West Nottingham Academy. A civil penalty of six thousand five hundred dollars (\$6,500) with a cash component of zero dollars (\$0) has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for AHERA", dated January 31, 1989, as supplemented by the "Gravity Based Penalty Matrices for Violations, which occur after January 30, 1997, for AHERA Interim Final ERP" effective January 30, 1997, and EPA's September 21, 2004 "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective Date: October 1, 2004)".

TSCA Section 207(a) provides that any civil penalty under AHERA from a local education agency ("LEA") be reduced by the LEA's costs spent complying with AHERA requirements. The LEA in this case documented that it spent ten thousand two hundred dollars (\$10,200) following the EPA's March 2008 inspection to comply with AHERA and, therefore, the cash component of the six thousand five hundred dollar (\$6,500) assessed civil penalty is zero dollars (\$0). This is consistent with the "Assessing Administrative Civil Penalties Against an LEA" section of the 1989 Interim Final Enforcement Response Policy for AHERA.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

cc: Dr. John D. Watson
Principal, West Nottingham Academy