

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

IN RE: :  
: :  
Board of Education of Dorchester County : Docket No: TSCA-03-2008-0314  
Public Schools : :  
700 Glasgow Street : :  
Cambridge, Maryland 21613 : :  
: Consent Agreement  
Respondent :

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement ("CA"), issued under the authority set forth in sections 16 and 207 of 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 ("Complainant") and the Board of Education of Dorchester County Public Schools ("DCPS"). This CA includes the assessment of a civil penalty against DCPS ("Respondent"), because it is a local education agency liable for violations which occurred at thirteen of the Dorchester County Public Schools, located in Dorchester County, Maryland (the "Facilities"), pursuant to the Toxic Substances Control Act ("TSCA"), Subchapter II (the Asbestos Hazard Emergency Response Act or "AHERA") 15 U.S.C. §§ 2641 to 2656; 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 AHERA and the federal regulations

implementing 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 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 the Environmental Protection Agency's ("EPA") 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 the Asbestos

Hazard Emergency Response Act ("AHERA"), Subchapter II of TSCA, 42 U.S.C. §§ 2641-2656, and regulations promulgated thereunder.

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 fifty five thousand two hundred and fifty dollars (\$55,250) since the EPA's March 2007 inspections for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with § 207(a) of TSCA, 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 and the federal regulations implementing 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, DCPS, is the "Local Education Agency" ("LEA") as that term is defined

under Section 202(7) of TSCA, 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, including the Facilities, 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, including the Facilities and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

15. The Facilities; 1). Choptank Elementary School, located at 1103 Maces Lane, in Cambridge, MD; 2). Maces Lane Middle School, located at 1101 Maces Lane, in Cambridge, MD; 3). Judy Hoyt Center, located at 1405 Glasgow Road, in Cambridge, MD; 4). Hurlock Elementary School, located at 301 Charles Street, in Hurlock, MD; 5). Maple Elementary School, located at 5225 Egypt Road, located in Cambridge, MD; 6). Sandy Hill Elementary School, located at 1503 Glasgow Road, in Cambridge, MD; 7). South Dorchester High School, located at 3485 Church Creek Golden Hill Road, in Church Creek, MD; 8). North Dorchester Middle School, located at 5745 Clover Dale Road, in Hurlock, MD; 9). North Dorchester High School, located at 5875 Clover Dale Road, in Hurlock, MD; 10). Vienna Elementary School, located at 4965 Ocean Gateway, in Vienna, MD; 11). Dorchester School of Technology, located at 2465 Cambridge Bypass, in Cambridge, MD; 12). Cambridge South Dorchester High School, located at

2475 Cambridge Bypass, in Cambridge, MD; and 13). Warwick Elementary School, located at 155 Main Street, in Secretary, MD, are "school[s]" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. 2642(12) and 40 C.F.R. § 763.83.

16. The Facilities are each a "school building[s]" 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. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect, each LEA conduct reinspections of all friable and nonfriable known or assumed asbestos containing building materials ("ACBM") in each school building that they lease, own, or otherwise use as a school building.
19. Inspections conducted by EPA in March 2007 found that the DCPS did not conduct reinspections at nine of the Facilities; 1). Hurlock Elementary School, located at 301 Charles Street, in Hurlock, MD; 2). Maple Elementary School, located at 5225 Egypt Road, located in Cambridge, MD; 3). Sandy Hill Elementary School, located at 1503 Glasgow Road, in Cambridge, MD; 4). South Dorchester High School, located at 3485 Church Creek Golden Hill Road, in Church Creek, MD; 5). North Dorchester Middle School, located at 5745 Clover Dale Road, in Hurlock, MD; 6). North Dorchester High School, located at 5875 Clover Dale Road, in Hurlock, MD; 7). Vienna Elementary School, located at 4965 Ocean Gateway, in Vienna, MD; 8). Cambridge South Dorchester

High School, located at 2475 Cambridge Bypass, in Cambridge, MD; and 9). Warwick Elementary School, located at 155 Main Street, in Secretary, MD.

20. Respondent's failure to conduct reinspections at each of the nine Facilities for ACBM are violations of 40 C.F.R. § 763.85(b)(1), and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

#### COUNT II

21. The allegations contained in Paragraph 1 through 20 are incorporated herein by reference.
22. 40 C.F.R. § 763.93(g)(1)-(3) require that LEAs maintain completed and updated copies of management plans in LEA and school administrative offices, and make them available for inspection in accordance with 40 C.F.R. § 763.93(g)(1).
23. During the inspections in March 2007 of the DCPS Schools listed as follows: 1). Choptank Elementary School, located at 1103 Maces Lane, in Cambridge, MD; 2). Dorchester School of Technology, located at 2465 Cambridge Bypass, in Cambridge, MD; and 3). Hurlock Elementary School, located at 301 Charles Street, in Hurlock, MD, the EPA inspector found that the management plans were not available at the LEA district administrative office, nor at the schools for each school listed above; and 4). the Judy Hoyt Center, located at 1405 Glasgow Road, in Cambridge, MD; and 5). Mace's Lane Middle School, located at 1101 Maces Lane, in Cambridge, MD, the management plans were not at the schools.
24. As a result, based on currently available information, EPA concludes that the DCPS failed to comply with the requirements of 40 C.F.R. § 763.93(g)(1)-(3).

#### IV. Settlement Recitation

25. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that the Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for Respondent's TSCA 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, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of fifty five thousand two hundred and fifty dollars (\$55,250) is appropriate.
26. 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, 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.
27. Respondent certifies that it has spent at least fifty five thousand two hundred and fifty dollars (\$55,250) since EPA's March 2007 inspections to comply with Subchapter II of TSCA. Therefore, pursuant to sections 16(a)(2)(C) and 207(a) of TSCA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of fifty five thousand two

hundred and fifty dollars (\$55,250) of the civil penalty assessed against the Respondent.

28. Respondent consents to the assessment of fifty five thousand two hundred and fifty dollar penalty (\$55,250) with a cash component of zero (\$0) dollars.

#### V. Reservation of Rights

29. 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 Subchapter II of TSCA, 15 U.S.C. §§ 2641 to 2656, 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

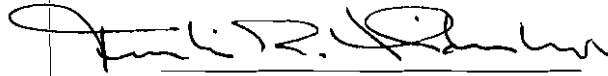
30. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.



For Respondent:

09-17-08

Date

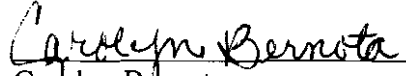


Dr. Hilderbrand, Chief Executive  
DCPS

For Complainant:

9/22/08

Date



Carolyn Bernota  
Enforcement Officer

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

9/26/08

Date



Abraham Ferdas, Director  
Land and Chemicals Division



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

IN RE:

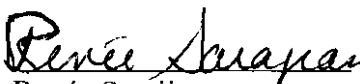
Board of Education of Dorchester County : Docket No: TSCA-03-2008-0314  
Public Schools :  
700 Glasgow Street :  
Cambridge, Maryland 21613 :  
Respondent :

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 fifty five thousand two hundred and fifty dollars (\$55,250) but that the cash component of that civil penalty will be zero (\$0) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), fifty five thousand two hundred fifty dollars (\$55,250) of the 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.

9/29/08  
Date

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

