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

IN RE:	:	
	:	
Board of Education of Somerset County Public Schools 7982 Crisfield Highway Westover, Maryland 21871	:	Docket No: TSCA-03-2008-0046
	:	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, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and the Board of Education of Somerset County Public Schools ("SCPS"). This CA includes the assessment of a civil penalty against SCPS ("Respondent"), because it is a local education agency liable for violations which occurred at Greenwood Elementary School, Somerset Intermediate School, and Washington High School, all located in Somerset 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 of TSCA alleged herein.

II. General Provisions

1. For 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 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 thirteen thousand four hundred and three dollars ($13,403) since the Maryland Department of the Environment's ("MDE's") November 2006 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, SCPS, 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 Greenwood Elementary School facility, located at 11412 Dryden Road, Princess Anne, MD, is comprised of an original building and an annex. The original building and annex at the Greenwood Elementary School is a "school building" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. 2642(12) and 40 C.F.R. § 763.83. The Somerset Intermediate School facility, located at 8928 Sign Post Road, Westover, MD, is comprised of a main building and four trailers. The main building and each of the four trailers at the Somerset Intermediate School are each "school building[s]" as that term is defined at Section 202(13) of TSCA, 15 U.S.C. 2642(12) and 40 C.F.R. § 763.83. The Washington High School facility, located at 10902 Old Princess Anne Road, Princess Anne, MD, is comprised of a main building and a trailer. The main building and the trailer at the Washington High School are both "school building[s]" as that term is

at Section 202 (13) of TSCA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT I

16. The allegations contained in Paragraphs 1 through 15 are incorporated herein by reference.

17. 40 C.F.R. § 763.93(g)(4), requires *inter alia*, that at least once each school year, the LEA notify in writing parent, teacher, and employee organizations of the availability of management plans and include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification.

18. Inspections conducted by MDE in November 2006 found that the SCPS had not provided annual written notifications to parent, teacher and/or employee organizations at each of the three Facilities.

19. Respondents failure to provide the annual notifications at each of the three Facilities are violations of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT II

20. The allegations contained in Paragraph 1 through 19 are incorporated herein by reference.

21. Section 40 C.F.R. § 763.93(a)(2) requires local education agencies to include new leased or acquired buildings as part of the management plan for the school prior to their use as school buildings.

22. Inspections conducted by the MDE in November 2006 found that the SCPS had failed to include four trailers used as school buildings in the asbestos management plan for the Somerset Intermediate School, one trailer used as a school building in the asbestos management plan for Washington High School, and an annex to the school building in the asbestos management plan for Greenwood Elementary School.

23. Respondent's failure to include the four trailers at the Somerset Intermediate School, the one trailer at the Washington High School, and the annex to the Greenwood Elementary School building, in the respective asbestos management plans are violations of 40 C.F.R. § 763.93(a)(2) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT III

24. The allegations contained in paragraphs 1 through 23 are incorporated herein by reference.

25. 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 reinspecton 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.

26. Inspections conducted by MDE in November 2006 found that the SCPS did not conduct reinspections at each of the three Facilities.

27. Respondent's failure to conduct reinspections at each of the three 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).

IV. Settlement Recitation

28. 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)(c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of twenty two thousand one hundred dollars ($22,100) is appropriate.

29. 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.

30. Respondent certifies that it has spent thirteen thousand four hundred and three dollars ($13,403) since MDE's November 2006 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 thirteen thousand four hundred and three dollars ($13,403) of the civil penalty assessed against the Respondent.

31. Respondent consents to the assessment of twenty two thousand one hundred dollars ($22,100) civil penalty with a cash component of eight thousand six hundred and ninety seven ($8,697) dollars.

32. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of U.S. EPA, Region III, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251-6515 (Fedex and other non-U.S. Postal Service express mail deliveries shall be sent to Mellon Client Service Center, ATTN: Shift Supervisor, Room 0690, Lockbox 371099M, 500 Ross Street, Pittsburgh, PA 15262-0001). All payments made by check also shall reference the above case caption and docket number, TSCA-03-2008-0046. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"). All Automated Clearinghouse or REX payments shall be directed to PNC Bank, ABA No. 051036706, Environmental Protection Agency, Account No. 310006, CTX Format, Transaction Code 22 – checking, 808 17th Street NW, Washington DC 20074. At the same time that any payment is made, copies of any corresponding check, or written

notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Carolyn Bernota, Case Development Officer (3WC32), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first

thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

V. Reservation of Rights

34. 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

35. 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:

2-23-08
Date

Dr. Karen-Lee N. Brofee, Chief Executive
SCPS

For Complainant:

3/10/08
Date

Carolyn Bernota, Enforcement Officer

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

3/28/08
Date

Abraham Ferdas, Director
Waste and Chemicals Management Division

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

IN RE:

Board of Education of Somerset County Public Schools 7982 Crisfield Highway Westover, Maryland 21871	: : : : :	Docket No: TSCA-03-2008-0046

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 twenty two thousand one hundred dollars ($22,100) civil penalty with a cash component of eight thousand six hundred and ninety seven ($8,697) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), thirteen thousand four hundred and three dollars ($13,403) 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.

3/28/08
Date

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

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN RE:

Board of Education of Sommerset County Public Schools 7982 Crisfield Highway Westover, MD 21871	:	Docket No. TSCA-03-2008-0046
Respondent	:	Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029 and that true and correct copies were served regular U.S. Mail upon the following person:

Dr. Karen-Lee N. Brofee, Chief Executive
Board of Education Sommerset County Public Schools
7982 Crisfield Highway
Westover, MD 21871

Date: 3/28/2008

Carolyn Bernota

Mrs. Carolyn Bernota
Enforcement Officer
U.S. EPA - Region III