



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 29 2005

REPLY TO THE ATTENTION OF

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jean-Vierre Adams  
Detroit Public Schools  
Office of the General Counsel  
3011 W. Grand Blvd.  
Suite 1800  
Detroit, Michigan 48202

Re: Lyle Building Demolition  
92 Peterboro Street  
Detroit, Michigan  
Administrative Consent Order

Dear Ms. Adams:

Enclosed is an executed original of a Consent Order regarding the above captioned case.

If you have any questions regarding this case, please contact Stuart Hersh, Associate Regional Counsel, at 312-886-6235.

Sincerely yours,

*Linda H. Rosen*  
For Rosen

Linda H. Rosen, Chief  
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
)  
Detroit Public Schools ) **Administrative Consent Order**  
Detroit, Michigan )  
) **EPA-5-05-113(a) MI-04**  
)  
Proceeding Under )  
Section 113(a)(3) )  
of the Clean Air Act, )  
42 U.S.C. §§ 7413(a)(3) )  
)

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**Administrative Consent Order**

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Detroit Public Schools under Section 113(a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(3).

2. By consenting to this order Detroit Public Schools makes no admission of liability.

**Statutory and Regulatory Background**

3. The Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. § 7412.

4. Under Section 112 of the Act, the Administrator promulgated the NESHAP for Asbestos at 40 C.F.R. Part 61, Subpart M. On November 20, 1990, U.S. EPA amended the asbestos NESHAP standard. The NESHAP for asbestos applies to building renovation and demolition activities.

5. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), provides, in relevant part, that "after the effective date of any emission standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation." Thus, a violation of the asbestos NESHAP constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

6. Pursuant to 40 C.F.R. § 61.145.145(a), the asbestos NESHAP applies to each "owner or operator" of a "demolition or renovation activity" at a "facility", as those terms are defined at 40 C.F.R. § 61.141.

7. The requirements of 40 C.F.R. § 61.145(b) and (c) of the asbestos NESHAP apply to a facility being demolished if the combined amount of Regulated Asbestos Containing Material (RACM) is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously.

8. Pursuant to 40 C.F.R. § 61.145(a), prior to the commencement of demolition, the owner or operator of a demolition activity must thoroughly inspect the facility for the presence of asbestos.

9. The NESHAP, at 40 C.F.R. § 61.145, requires the owner or operator of an affected facility to notify of their intention to demolish or renovate the facility, and to properly remove all RACM from the facility. Specifically, 40 C.F.R. § 61.145(b)(1) requires each owner or operator of a demolition or renovation activity to provide, among other things, the Administrator with written notice of intention to demolish or renovate at least ten working days before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or disturb asbestos material.

10. Pursuant to 40 C.F.R. § 61.145(b)(4)(vi), owners or operators of an affected facility, among other things, must estimate and notify of the amount of Category II non-friable ACM that will not be removed prior to demolition.

11. Pursuant to 40 C.F.R. § 61.145(c)(1), owners or operators of a demolition activity, among other things, must remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material.

12. 40 C.F.R. § 61.145(c)(6)(i) requires owners or operators of an affected facility to adequately wet all RACM and ensure it remains wet until collected or contained or treated in preparation for disposal.

13. Under Section 113(a)(3) of the Act, 42 U.S.C. §7413(a)(3), the Administrator of the U.S. EPA may issue an order

requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

### **Findings**

14. Respondent neither admits nor denies the factual allegations or conclusions of law in these findings.

15. During the summer of 2001, Detroit Public Schools was the owner of a demolition at 92 Peterboro Street in Detroit, Michigan (formerly known as the Lyle Building) which was an apartment building, comprised of more than 4 dwelling units.

16. The 92 Peterboro Street facility contained at least 260 linear feet, 160 square feet or at least 1 cubic meter of RACM.

17. The NESHAP for asbestos applied to the 92 Peterboro Street facility.

18. On March 25, 2003, U.S. EPA issued to Detroit Public Schools a finding of violation alleging that Detroit Public Schools violated the NESHAP for asbestos by violating 40 C.F.R. 61.145.

19. On June 5, 2003, representatives of Detroit Public Schools and U.S. EPA discussed the March 25, 2003 finding of violation.

20. After a thorough investigation of all relevant facts, and the cooperation and good faith exhibited by Detroit Public Schools, U.S. EPA and Detroit Public Schools agree to the compliance measures set forth below.

### **Compliance Program**

21. By the effective date of this Order, Detroit Public Schools must achieve, demonstrate and maintain compliance with the NESHAP for asbestos.

22. Detroit Public Schools agrees to comply with the NESHAP for asbestos on all demolitions that are subject to the asbestos NESHAP and for which Detroit Public Schools qualifies as "owner" or "operator, as defined in the asbestos NESHAP.

**General Provisions**

23. This Order does not affect Detroit Public School's responsibility to comply with other local, State, and Federal laws and regulations.

24. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other section of the Act.

25. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Detroit Public School's violation of the NESHAP for asbestos.

26. Failure to comply with this Order may subject Detroit Public Schools to penalties under Section 113 of the Act, 42 U.S.C. § 7413.

27. The terms of this Order are binding on Detroit Public Schools, its assignees and successors. Detroit Public Schools must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, Air Enforcement and Compliance Assurance Branch, Compliance Tracker, AE-17J, 77 W. Jackson, Chicago, Illinois, that Detroit Public Schools has given the notice.

28. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

29. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

30. Detroit Public Schools agrees to the terms of this Order.

31. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will expire two years from the effective date, if Detroit Public Schools has complied with all of its terms.

10-31-05



Date

Detroit Public Schools

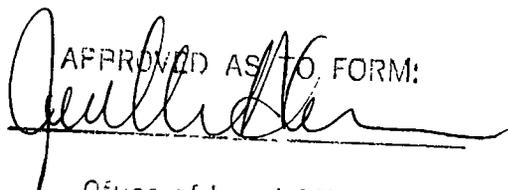
11/29/2005



Date

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosure

APPROVED AS TO FORM:  


Office of Legal Affairs

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-05-MI-4, by Certified Mail, Return Receipt Requested, to:

Jean-Vierre Adams  
Detroit Public Schools  
Office of the General Counsel  
3011 W. Grand Blvd.  
Suite 1800  
Detroit, Michigan 48202

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-05-MI-4, by First Class Mail to:

Thomas Hess  
Constitution Hall, 3<sup>rd</sup> Floor North Tower  
525 West Allegan Street  
Lansing, Michigan 48933

on the 1<sup>st</sup> day of December 2005.



Shanee Rucker, Administrative  
Assistant  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320006 14479444