

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DURHAM SCHOOL SERVICES, LIMITED  
PARTNERSHIP OF PALMER, AK

Respondent.

DOCKET NO. SDWA-10-2024-0176

**CONSENT AGREEMENT**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c).

1.2. In accordance with Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Part 22 Rules”), EPA issues, and Durham School Services, Limited Partnership, (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

1.3. Congress authorized EPA to administer the Underground Injection Control (“UIC”) program within any state that does not have an approved UIC program. SDWA § 1422(c), 42 U.S.C. § 300h-1(c).

1.4. The State of Alaska does not have an approved UIC program for Class V injection wells. Therefore, EPA Region 10 directly implements the Class V UIC program in the State of Alaska. 40 C.F.R. § 147.101.

1.5. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA's enforcement authority includes commencing a civil action under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), or issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

1.6. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

1.7. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

## **II. PRELIMINARY STATEMENT**

2.1. Issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective. 40 C.F.R. §§ 22.13(b), 22.18.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority, pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the SDWA is proposed to be assessed.

2.3. Respondent admits the jurisdictional allegations of this Consent Agreement.

2.4. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

2.5. Respondent is voluntarily entering into the terms of this Consent Agreement, and as a result, Respondent agrees not to request a hearing on this Consent Agreement at any time and Respondent also agrees to not request a hearing on the Final Order after it becomes effective in accordance with Paragraph 2.1. SDWA § 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A).

2.6. Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Consent Agreement. Respondent agrees not to contest the validity of any terms and conditions of this Consent Agreement in any action to enforce, or any action arising from, this Consent Agreement.

2.7. This Consent Agreement and Final Order shall bind Respondent and their agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

2.8. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the SDWA together with the specific provisions of the SDWA and the implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **Statutory and Regulatory Background**

3.1. Underground injection is prohibited, except as authorized by rule or permit under the UIC program. 40 C.F.R. § 144.11.

3.2. Injection activity that allows the movement of fluids containing any contaminant into an Underground Source of Drinking Water (“USDW”) endangers drinking water sources and is prohibited if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. SDWA §§ 1421(b)(1), (d)(2), 42 U.S.C. § 300h(b)(1), (d)(2); 40 C.F.R. §§ 144.12(a), 144.82(a)(1).

3.3. A “contaminant” is any physical, chemical, biological, or radiological substance or matter in water. SDWA § 1401(6), 42 U.S.C. § 300f(6); 40 C.F.R. § 144.3.

3.4. A “motor vehicle waste disposal well” (“MVWDW”) is a Class V injection well that receives or has received fluids from facilities at which vehicular repair or maintenance occurs. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”) established by federally mandated primary drinking water regulations. These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.5. The UIC regulations require the owner or operator of a Class V injection well to submit inventory information to the EPA prior to injection. 40 C.F.R. § 144.26.

3.6. The UIC regulations prohibit the construction of any MVWDW on or after April 5, 2000, and require that all MVWDWs in Alaska that were operational or under construction on April 5, 2000, be closed by January 1, 2005. 40 C.F.R. §§ 144.87(b)(1)(i), 144.88(b)(1)(v), (2).

## **General Allegations**

3.7. Respondent is a partnership and is therefore a “person” within the meaning of the SDWA. SDWA § 1401(12), 42 U.S.C. § 300f(12); 40 C.F.R. § 144.3.

3.8. Respondent is the “operator” of the property known as Durham School Services at 1600 S Tanya Ct in Palmer, Alaska (“the Site”). 40 C.F.R. § 144.3.

3.9. The Site includes a vehicle maintenance shop, in which Respondent performs maintenance and repairs on motor vehicles.

3.10. Respondent first leased the Site from the current landlord, McKenna Bros. Properties, LLC (“Landlord”) in April of 2022. Respondent began utilizing the internal, open floor drain system that drained and placed various fluids from the Site, including motor vehicle waste, at least directly below the land surface (“Injection Well”).

3.11. The Site includes a building utilizing an Injection Well which receives fluids from an open drain located on the shop floor which drains through an oil water separator to a septic tank and leachfield, where it injects to the ground.

3.12. The Injection Well exists for the purpose of underground injection of fluids and is therefore a Class V injection well. 40 C.F.R. §§ 144.3, 144.6, 144.81, and 146.5.

3.13. As the “operator” of a Class V injection well, Respondent is subject to regulation under the UIC program. 40 C.F.R. § 144.3.

3.14. The Injection Well receives fluids from vehicular body repair or maintenance activities and, therefore, is a MVWDW. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.15. The Injection Well at the Site overlays the regional aquifer system and is not within the area of an exempted aquifer. 40 C.F.R. § 146.4.

3.16. The aquifer system underneath the Site is an Underground Source of Drinking Water. 40 C.F.R. § 144.3.

### **Violations**

#### **Count 1: Endangerment of an Underground Source of Drinking Water**

3.17. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.18. Fuels and other motor vehicle fluids may contain contaminants, such as benzene, toluene, ethylbenzene, xylenes, cadmium, chromium, and lead, in concentrations which exceed MCLs, as established in the primary drinking water regulations under 40 C.F.R. Part 141.

3.19. Fuels, other motor vehicle fluids, and/or other contaminants may cause a violation of primary drinking water regulations or may otherwise adversely affect the health of persons if allowed to move into a USDW.

3.20. Respondent constructed, operated, maintained, converted, plugged, abandoned, and/or conducted other injection activity in a manner that allowed the movement of fluid containing any contaminant into a USDW, such that the presence of that contaminant may cause a violation of a primary drinking water regulation or may otherwise adversely affect the health of persons, in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a)(1).

3.21. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$27,894 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

**Count 2: Operation of a MVWDW Constructed or Converted After April 5, 2000**

3.22. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.23. Respondent has operated the Injection Well, which is a MVWDW, that was constructed or converted after April 5, 2000, in violation of 40 C.F.R. § 144.88(b)(2).

3.24. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$27,894 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

**Count 3: Failure to Submit Inventory Information Prior to Commencing Injection**

3.25. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.26. Respondent failed to submit inventory information prior to injecting into a Class V well authorized by rule in violation of 40 C.F.R. § 144.26.

3.27. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$27,894 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

#### IV. TERMS OF SETTLEMENT

4.1. Based upon the FINDINGS AND CONCLUSIONS in Part III of this Consent Agreement, and pursuant to Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), Respondent is ORDERED and AGREES to the following:

##### **Compliance Order**

4.2. **Prohibition of Injection:** Respondent shall not inject any fluid into the Injection Well.

4.3. **Implementation of Well Closure Requirements:** Respondent shall implement the Well Closure requirements described in Paragraph 4.11.

4.4. **Notifications:**

4.4.1. Respondent shall provide EPA's Project Coordinator, identified in Paragraph 4.8, notification by email no less than five (5) days prior to commencement of any activity under this Consent Agreement.

4.4.2. Respondent shall provide a copy of this Consent Agreement to any contractor and/or consultant retained to perform any work described in this Consent Agreement at least 48 hours prior to the initiation of such work. Respondent shall simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.8, written notice that the notice required in this subparagraph was given. No contract between Respondent and a contractor and/or a consultant shall affect Respondent's obligation to comply fully with this Consent Agreement.

4.4.3. Respondent shall provide a copy of this Consent Agreement to any successor in ownership, control, operation, or any other interest in all or part of the Injection Well, at least thirty (30) days prior to the transfer. Respondent shall



simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.8, written notice that the notice required in this subparagraph was given. A transfer of property rights at the Site will not affect Respondent's obligation to comply fully with this Consent Agreement.

4.5. **Site Access:** This Consent Agreement does not affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, permit, court order, or agreement. Respondent shall provide EPA or their authorized representatives access to the Site upon reasonable notice. EPA or its authorized representatives shall be permitted to move freely at the Site and appropriate off-site areas to determine compliance with this Consent Agreement and to conduct actions in accordance with this Consent Agreement.

4.6. **Site Data:** Upon EPA's request, Respondent shall provide the requestor access to all records and documentation related to the conditions at the Site and to results or data pertaining to the restoration and mitigation activities conducted under this Consent Agreement.

4.7. **Record Preservation:** Respondent shall preserve and retain and shall instruct any consultant and other persons acting on their behalf, to preserve and retain all records and documents relating in any manner to the requirements of Paragraph 4.11 for three years after EPA has issued a written approval of Respondent's Final Well Closure Report. At the end of that three-year period, EPA may request Respondent to provide EPA with copies of any records and documents related to this Consent Agreement or implementation of the requirements of Paragraph 4.11. If EPA requests records and documents, Respondent shall, at no cost to EPA, but subject to a claim of privilege, provide EPA the original or copies of the records and documents within thirty (30) days of EPA's request. If EPA makes no request at the end of the three-year period, Respondent may dispose of the records and documents.

4.8. **Project Coordinator:**

4.8.1. Donna Ortiz is the EPA Project Coordinator who shall oversee implementation of this Consent Agreement. The Project Coordinator shall receive communications, which include, but are not limited to, all documents, reports, comments, approvals, and other correspondence submitted or exchanged under this Consent Agreement. All submissions required by this Consent Agreement shall be sent to:

Donna Ortiz  
U.S. Environmental Protection Agency  
Field, Data, & Drinking Water Enforcement Section  
Phone: (206) 553-2429  
Email: Ortiz.donna@epa.gov

4.8.2. Within ten (10) days of the effective date of this Consent Agreement and Final Order in accordance with Paragraph 2.1, Respondent shall identify a project coordinator for purpose of receipt of all communication and implementation of this Consent Agreement. The contact information for this project coordinator shall be sent to the EPA Project Coordinator.

4.9. **Failure to comply:** Failure to timely and appropriately implement to EPA's satisfaction any element of the requirements of Paragraph 4.11 shall be deemed a violation of this Consent Agreement and the SDWA.

4.10. **Scope of Consent Agreement Compliance Order Section:**

4.10.1. This Consent Agreement is not and shall not be construed to be a permit under the SDWA, nor shall it relieve or affect Respondent's obligation under the SDWA, or any other applicable federal or state laws, regulations or permits. Compliance with this Consent Agreement shall be no defense to any actions commenced pursuant to applicable laws, regulations, or permits.

4.10.2. This Consent Agreement shall not be construed to preempt or preclude in any way any future administrative order issued by EPA or judicial action brought by the United States. This Consent Agreement shall not be construed to resolve any claims for administrative or civil penalties that are not set out in this Consent Agreement and that may be assessed or sought by EPA or the United States.

4.10.3. This Consent Agreement shall in no way affect the rights of EPA or the United States against any person not a party to this Consent Agreement.

4.10.4. Nothing in this Consent Agreement shall be deemed to constitute a precedent by any party for any future administrative order, consent agreement, consent decree or civil action relating to the Site and/or any restoration work undertaken at the Site.

4.11. **Well Closure Requirements:** EPA requires that closures of all Class V injection wells be conducted in a manner that protects USDWs and complies with all applicable laws and regulations related to removal of materials from and adjacent to the well. 40 C.F.R. §§ 144.12(a) and 144.82. Closures of MVWDWs are conducted under specific regulations, including a requirement to notify EPA a minimum of thirty (30) days before the planned well closure activity. 40 C.F.R. § 144.88(b)(1)(vii). A MVWDW may also be closed by converting it to a sanitary well. EPA's requirements for converting MVWDWs to sanitary wells are specified in 40 C.F.R. § 144.89(b).

To successfully implement the well closure requirements, Respondent shall comply with the following standards and requirements:

4.11.1. Well Closure:

a. Draft Well Closure Plan: For the Injection Well at the Site, Respondent shall submit EPA's Pre-Notification Form 7520-17 at least 30 days before closure activities commence. Respondent shall submit a Draft Well Closure Plan to EPA, for review and approval, no later than September 30, 2024. After reviewing this document, EPA may require edits to the Draft Well Closure Plan before approving. The Draft Well Closure Plan shall be approved before work can commence at the Site unless EPA provides written authorization to move forward prior to approval of the Draft Well Closure Plan.

b. If Respondent intends to continue use of the floor drains, Respondent shall include a plan for the proper disposal of the floor drain wastewater, including potential installation of a holding tank or evaporation pond. Any installation of a holding tank or evaporation pond would require Alaska Department of Environmental Conservation ("ADEC") approval. No injection of floor drain effluent is allowed to access leachfield soils or groundwater.

c. The EPA is likely to approve a Draft Well Closure Plan if it contains the information described below. However, the information listed below is neither an exclusive nor exhaustive set of requirements as Well Closure Plans are evaluated on a case-by-case basis and the EPA may require additional information prior to approval. The Draft Well Closure Plan must provide evidence that the non-sanitary waste discharge has permanently ended and, at minimum, provide the following information:

i. A schematic diagram displaying the Injection Well system that identifies all drains, piping, processing units such as oil/water separators, septic tanks, and final discharge mechanisms such as drywells, leachfields, log cribs, and open underground pipe.

ii. A detailed description of all fluids known to Respondent through reasonable means which enter, or have entered, the Injection Well.

iii. A detailed description identifying that the connections between all drains at the Site and the Injection Well system will be or have been verified and the planned disconnections between the well and the piping, including photographing disconnections, well removal, and soil sampling locations.

iv. A description of plug emplacements (if applicable).

v. A detailed description of how all contaminated liquids, sludge, and soil will be removed from the point of discharge in and around the Injection Well.

vi. A detailed description of on-site storage that will be used while awaiting proper disposal of contaminated liquids, sludge, soil, and other materials removed from the Injection Well system.

vii. A detailed description of how all wastes will be characterized for disposal purposes in accordance with Federal, State, and local regulations.

viii. An assurance that all backfill material is clean. This includes documenting the source of material and ensuring all backfill originates from non-contaminated areas.

4.11.2. Sampling Requirements: The Draft Well Closure Plan should include a sampling plan that documents the conditions observed and sampled at the point of injection until clean soil is reached, or until structural integrity of the excavation or buildings or other significant structures near the excavation may be compromised by remediation. The sampling plan should describe the proposed methods used for visual, olfactory, and photo-ionization detection as well as sample collection and analytical methods. The sampling plan should also include a quality assurance project plan or QAPP. Respondent shall collect a sample at the point of injection from the Injection Well. The proposed location shall be based on the construction of the Injection Well and likelihood of detecting any contaminants that were injected beneath the ground surface. Respondent shall select a certified or accredited laboratory to analyze the sample for the following constituents, using the referenced EPA method or Alaska method for each constituent:

- a. Volatile organic compounds by the most current version of EPA Method 8260;
- b. Gasoline range organics (“GRO”) by the most current version of Alaska method AK101;
- c. Diesel range organics (“DRO”) by the most current version of Alaska method AK102;

- d. Residual range organics (“RRO”) by the most current version of Alaska method AK103;
- e. Petroleum Aromatic hydrocarbons (“PAHs”) by EPA method 8270-SIM;
- f. Semivolatile organic compounds by the most current version of EPA Method 8270;
- g. Arsenic, cadmium, chromium and lead by EPA method 6020; and
- h. Mercury by EPA method 7471.

Respondent shall submit sample results to EPA no later than June 30, 2025. If the soil sample results show an exceedance of state cleanup standards, additional samples may be required to identify the extent of contamination.

4.11.3. Closure: Respondent shall close the Injection Well at the Site no later than September 1, 2025, following the approved Well Closure Plan. Closure shall be in accordance with 40 C.F.R. §§ 144.82, 144.89, and 146.10(c), including removal of all contaminated liquids, sludge, and soil from in and around the Injection Well.

“Contaminated” for purposes of Paragraph 4.11.3 shall be defined as exceeding applicable Alaska Department of Environmental Conservation standards. Well closure activities include permanent disconnection from the floor drain to the Injection Well system. All potential piping must be disconnected.

4.11.4. Final Well Closure Report: Respondent shall submit to EPA a Final Well Closure Report for the Injection Well no later than October 30, 2025, with documentation of all closure activities for the Injection Well, including a narrative statement describing the closure procedures, photographic documentation of all closure activities, sample

results and any waste manifests from the closure of the Injection Well, and a certification that the well closure has occurred in accordance with the approved Well Closure Plan and Paragraph 4.11.

a. EPA will review and approve or disapprove the Final Well Closure Report. After reviewing this document, EPA may require edits and/or additional information to the Final Well Closure Report before approving. If EPA disapproves a Final Well Closure Report Respondent shall either resubmit a revised Final Well Report or a plan to correct the deficiencies within thirty (30) calendar days of notice that the Final Well Closure Report has been disapproved.

4.11.5. Performance Standards for Well Closure: Closure of the Injection Well shall be conducted in a manner that protects USDW and complies with all applicable laws and regulations related to removal of materials from and adjacent to the Injection Well: 40 C.F.R. §§ 144.12(a), 144.82, 144.89, and 146.10(c).

4.11.6. Summary of Deliverables: The schedule of activities under the requirements of Paragraph 4.11 may be summarized as follows:

Deliverables / Actions	Due Date
Draft Well Closure Plan Submitted	September 30, 2024
Sample Results Submitted	June 30, 2025
Well Closure Complete	September 1, 2025



Final Well Closure Report Submitted	October 30, 2025
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4.12. **Force Majeure:**

4.12.1. Respondent shall exercise their best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting any deadlines set forth in this Consent Agreement, Respondent shall, within forty-eight (48) hours of the delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

4.12.2. If EPA agrees in writing that the delay or anticipated delay in compliance with this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for the period of the delay resulting from the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.

4.13. **Termination and Satisfaction:** In accordance with Paragraph 4.11, Respondent shall submit to EPA a Final Well Closure Report documenting the completion of all requirements described in Paragraph 4.11. Upon receipt of a Final Well Closure Report, EPA may schedule an inspection of the Injection Well with Respondent and other interested state and/or federal agencies or request additional information. After review of the Final Well Closure Report, EPA will notify Respondent in writing with approval or disapproval of Respondent's Final Well Closure Report. With the exception of Paragraphs 4.2 and 4.5 through 4.7, this Consent Agreement shall terminate after EPA issues a written approval of Respondent's Final Well Closure Report and EPA verifies that Paragraphs 4.15 – 4.20 are satisfied.

4.14. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraphs 4.2 – 4.13, is identified as restitution or as an amount paid to come into compliance with such law, as the case may be, in the court order or settlement agreement.

#### **Administrative Penalty**

4.15. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and in consideration of the statutory penalty factors identified in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), Respondent agrees to pay a civil penalty in the amount of \$164,000 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk.

4.16. Respondent agrees to pay the Assessed Penalty within thirty (30) days of the effective date of the Final Order in accordance with Paragraph 2.1, and to undertake the actions specified in this Consent Agreement. Payments may not be made before the filing date.

4.17. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check shall be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent shall note on the check the title and docket number of this action.

4.18. Concurrently with payment, Respondent shall serve photocopies of the check, or proof of other payment method described in Paragraph 4.17, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Donna Ortiz  
U.S. Environmental Protection Agency  
Region 10, M/S ECAD-20-CO4  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Ortiz.donna@epa.gov

4.19. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with costs, attorney's fees, and interest, as set

forth below. In any collection action, the validity, amount, and appropriateness of the penalty will not be subject to review. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7).

4.20. **Interest, Charges, and Penalties on Late Payments.** Pursuant to 42 U.S.C. § 300h-2, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

4.20.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates per 42 U.S.C. § 300h-2(c)(7). The rate of interest is the IRS large corporate underpayment rate.

4.20.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

4.20.3. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

4.21. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

4.21.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.21.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.

4.21.3. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

4.21.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the debt, in addition to costs, attorney fees, and interest pursuant to 42 U.S.C. § 300h-2(c)(7). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.22. **Federal Tax.** The Assessed Penalty, including any additional costs incurred under Paragraph 4.20, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C § 162(f).

4.23. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law

or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with the law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.

4.23.1. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

4.23.2. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

4.23.3. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov) within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

4.23.4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

## **General Provisions**

4.24. The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.25. Except as described in Paragraph 4.20.2 of this Consent Agreement, each party shall bear its own costs in bringing or defending this action.

4.26. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.27. The provisions of this Consent Agreement and the Final Order shall bind Respondent and their agents, servants, employees, successors, and assigns.

4.28. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.29. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

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Timothy Wertner  
President and Chief Executive Officer  
Durham School Services

DATED:

FOR COMPLAINANT:

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EDWARD J. KOWALSKI  
Director  
Enforcement and Compliance Assurance Division  
EPA Region 10