United States Nuclear Regulatory Commission Official Hearing Exhibit

In the Matter of: Entergy Nuclear Operations, Inc.
(Indian Point Nuclear Generating Units 2 and 3)

ASLBP #: 07-858-03-LR-BD01
Docket #: 05000247 | 05000286
Exhibit #: CLE000021-00-BD01
Admitted: 10/15/2012
Rejected:
Other:
Identified: 10/15/2012
Withdrawn:
Stricken:

Exhibit CLE000021

Submitted 12/22/11

FROM THE DESK OF
AARON MAIR

December 19, 2011

Paul DerOhannesian, II
DerOhannesian & DerOhannesian
677 Broadway, Suite 202,
Albany, NY 12207

Dear Paul,

Attached please find a copy of my CV and expertise in Geographical Information Systems, Environmental Justice, and Civil Rights advocacy.

Sincerely,

Aaron Mair

612 MAYWOOD AVENUE • SCHENECTADY, NEW YORK • 12303
PHONE: (518) 209-1492 • HOME: (518) 355-2925

Aaron Mair
(518) 209-1492 Cell

Address:
612 Maywood Ave
Schenectady, New York 12303
Cell: (518) 209-1492 Home: (518) 355 - 2925

EDUCATION: **State University Center at Binghamton**, New York

8/84 - 5/88	Political Science Doctoral Program (ABD-non-degree) : Advanced Graduate course work in Public Administration and Public Policy Analysis *(Left Ph.D. program for State service)
9/79 - 6/84	BA - History and Sociology
9/79 - 6/84	S.W.A.N.A. - Southwest Asia and North Africa studies certificate.
8/85 - 12/86	**Naval Education and Training Center**, Rhode Island.
8/82 - 2/83	**American University in Cairo**, Arab Republic of Egypt.

ENVIRONMENTAL BACKGROUND:

Member, Board of Directors, of 1,000,000 member National Sierra Club; Form er Chair of 41,000 member NYS Sierra Club Atlantic Chapter; ***Twenty-five year veteran urban environmental activist; regional and national Environmental Justice organizer and strategist from the State of New York. Environmental Protection Agency Region Two, Year 2000 Citizen Environmentalist Activist Award recipient.*** Won a $1.6 million federal RCRA settlement with New York State for the community of Arbor Hill in Albany, New York and used it to create two nonprofit com munity service organizations. Founde r and board president of Arbor Hill Environm ental Justice Corporation; Founder, board Member, and lecturer for the W. Haywood Burns Environmental Education Center in the Albany Capital region; Sierra Club Atlantic Chapter Statewide Vice Chair, Environm ental Justice Chair & B oard of Governor (elected statewide); Former Member of W hite House C ouncil on Environmental Quality; Member NYS Dep artment of Environmental Conservation Environmental Justice Workgroup; Member Pocantico Brownfield Consensus Workgroup; Member, The NYS Rivers Institute Task Force A dvisory Committee; Patroon Creek Watershed Workgroup; Sierra Club Croton Watershed Workgroup; New York League of Conservation Voters, Board Member; Albany Local Development Corporation Brownfield Technical Assistant; Hudson R iver Inner City Subsistence Fisherman Organizer; Charter Member National Environmental Justice Coordinating Committee; Founding Member Northeast Environmental Justice Network; Advocate for urban subsistence fishermen who identified the unique risks faced by minority communities in the Hudson R iver Valley. Assisted the New York St ate Department of Heal th in developing fishing advisories for Hudson River communities. Non-Governmental Organization (NGO) organizi ng charter m ember for the Center for Sustainable Development (CIDES) in the Republic of Panam a as present ed before the World Summit on Sustainable Development held in Johannesburg, South Africa (2003).

LOCAL ENVIRONMENTAL ORGANZATIONS FOUNDED:

Arbor Hill Environmental Justice Corporation. Arbor Hill Environmental Justice Corporation (AHEJ) is based in the community of Arbor Hill, within the City of Albany. From 1984 until 1994, the State of New York operated a regional trash incinerator in the heart of the Arbor Hill community. The incinerator facility, know n as the ANSW ERS (Albany New York Solid Waste to Energy Recovery System) plant, provided steam to the Capital complex (Empire State Plaza). In March of 1998, the Arbor Hill Concerned Citizens Neighborhood Association, the Natural Resources Defense Council, and the State of

New York announced an innovative settlement in a case brought against the State by the groups to abate contamination from the incinerator operated by the Office of General Services. This allowed for my creation of AHEJ. From 1998 - 2000, AHEJ was a member of the White House Council on Environmental Quality as per Executive Order 12898.

W. Haywood Burns Environmental Education Center. The purpose of this Corporation is to operate an environmental education technology center, and facilitate access to local natural resources. It is available for use by community residents, students in the City of Albany, and others from the Capital District. The Corporation is organized exclusively for charitable, educational, and scientific purposes, including, but not limited to environmental training of students and Arbor Hill residents, development of educational facilities and programs, and conservation and appropriate development of the Tivoli Lakes Nature Preserve in conjunction with the City of Albany and the State of New York. Its website will be utilized to publicize information and data related to natural resources and water quality.

Other Environmental Activities: 1999 Capital District Fields of Dreams, Community Service Award for Revitalizing an abandoned park for youth recreation; 1999 New York Council of Community Services, Community Builders Award for work in the service of Albany Residents; 1998 Council of Albany Neighborhood Associations, Thomas Senchyna Service award for Environmental work in the City of Albany; 1998 Black Nurses Association's Environmental Health Award recipient; 1997 NAACP, Albany Branch Award for Environmental Activism, 1995 City of Albany, Human Rights Award for Grassroots Environmental Work. 1994 Sierra Club Community Service Award; and Former Albany City Regional Coordinator at Livingston Middle School for the New York State Mentoring Program; and Former Board member of the Arbor Hill Development Corporation. Majority of my volunteer service involvement has centered on issues of equity in the delivery of services to New York State's economically disadvantaged. Consonant to this struggle have been my efforts to improve the environmental quality locally and nationally by supporting innovative leaders, educators, and governmental officials who seek a consensus approach to environmental policy.

PROFESSIONAL SERVICE:

1996 - Present **Public Affairs Radio Talk Show Co-Host**, Albany Broadcasting Company, Inc. (WROW 590 AM)

Co-host the AM radio talk show "News, Views, and Interviews" for WROW. Responsible for contacting guests, determining show content and format, and hosting. Conduct hour-long interviews on current events, special interest stories, politics, and regional issues for the entire Capital Region. Requires wide-ranging knowledge of issues and sharp public speaking skills.

1/03 – Present **Office of Public Health Practice, Public Health Information Group (OPHP-PHIG)**, New York State Department of Health

Geographic Information System (GIS) resource staff for the Center for Community Health: Work with ISHSG and individual local health departments (LHDs) to identify GIS capabilities and

resources. Helped PHIG's Assessm ent Initiative staff identify CDC's Epi-Info/Epi-Map software as a basic GIS tool for LHDs, and request CDC funding for the creation of a C ommunity Health Assessment tutorial using Epi-Info/Epi-Map in the Assessment Initiative 2004-5 budget. Help review, for LHD Com munity Health Assessments, the way that GIS is b eing utilized by LHDs to target high-risk populations, gaps in services, etc., so that further needs in GIS training and technical assistance can be identified.

Support CCH programs with GIS analysis as needed. This has included, for exam ple, developing regional county and zi p code maps for t he Bureau of W omen's Health, presenting small area perinatal health outcomes with actual perinatal service sites (hospitals, clinics, community-based health centers, etc.). Work with PHIG's Assessment Initiative to develop small area maps to be used in a web-based t raining course for Evi dence-based Public Health. Also serve as CCH representative on the DOH GIS Workgroup, coordinating GIS strategies, resources, and technology for the Departm ent. Serve as PHIG Liaison with the Office of Medicaid Management for the use of Medicaid data in public health surveillance, program targeting, needs assessment, and program evaluation activities. Assist in the development, expansion, and upkeep of web-based publ ic health information such as t he Community Health Assessment Clearinghouse, and assist the PHIG in special projects/studies that support CCH activities.

9/01 – 11/01 **World Trade Center Disaster Response**, New York State Departm ent of Health -New York State Emergency Management Office, Federal Emergency Management Administration, & NYC Offi ce of Em ergency Management,

New York State SEMO ad-hoc Public Health community disaster responder; Crisis desk coordi nator responsible for di spatching and deploying public health teams to support identification and removal threats to human health and t he environment around t he World Trade Center disaster area. New York State DOH, Em ergency responder deployed with New York C ity Police Department's Emergency Response Unit and Fi re Department of New York recovery teams to provide advance intelligence on surface and subsurface threats. Responsible for generation location maps identifying surface and subsurface hazards for em ergency response personnel. Generated GIS m aps and reports for New York C ity Police Department's Emergency Response Unit identifying the location of the Freon chiller units. Part o f the NYC Office o f Emergency Management's "Deep Infrast ructure" work sub-group creating maps on sub-surface structures for FEMA.

1/98 – 1/03 **Management Administration & Administrative Reports System (MARS)**, New York State Department of Health

M edicaid fiscal reporting system's director, responsible for conducting research, dat a analysis, and eval uation of heal th care

delivery through the N.Y.S. Medicaid program. I Managed the Medicaid Data Access Reports System (MDAS), an automated Medicaid reporting system. Supervise data collection and analysis of over fifty standardized Medicaid Management budget reports for all New York State Counties. Collect and analyze Medicaid program data and prepare written reports including such information as documentation of sources, description of analyses and findings, interpretation of results, and recommended courses of action. Activities related to the planning of studies, data analysis, and the provision of consulting and advisory services to County Commissioners, Senior Staff, and Unit Heads.

1/88 – 1/02 **Medicaid Data Security and Confidential Data Access Administrator**, New York State Department of Health

Medicaid records access and Security Officer charged with the development of confidentiality policy, procedures, and guidelines, for the implementation of Medicaid Data protection pursuant to Social Security Act, sec. 1902. *[42 U.S.C. 1396a]*(a)(7); and 42 CFR sec. 431 of the code of Federal Regulations. Developed and created Medicaid Confidential Data Review Policy and Committees guidelines, process and procedure. Data access officer responsible for drafting confidentiality agreements for the handling and use of Medicaid Data. I Drafted and implemented mandatory HIPAA Health Information Privacy training on Medicaid information. I Trained over 1,000 Health Department program staff on Medicaid HIPAA compliance requirements.

Successful expert State witness on Medicaid Confidentiality in several lawsuits defending federal statutes and State policy on use of Medicaid Data. Lead confidentiality expert witness in "New York State against Phillip Morris Companies, Inc.; et.al " Tobacco Litigation (Index No. 400361/97). State confidentiality expert in Article 78 action of "Data Niche v New York State Department of Social Services" (RJI# 01-94-ST5102).

Data Protection Review Board, New York State Department of Health

Responsible for reviewing, evaluating, and adjudicating institutional, private, and public sector research access to medical discharge abstracts and data records maintained by the New York State Statewide Planning and Research Cooperative System. Review up to fifteen to twenty data requests proposal quarterly. Evaluate and adjudicate each research request based on its appropriateness and compliance with State regulations.

Institutional Review Board, New York State Department of Health

Responsible for evaluating research and data analysis proposals, for the purpose of protecting human subjects. Also responsible for maintaining Department of Health compliance with federal and state regulations on human subjects research. Evaluate treatment

modalities, scientific inquiry value, research m ethods, and investigators' qualifications to conduct human subjects research.

3/90 - 7/90 **Special Assistant to the Deputy Commissioner-Medicaid**, New York State Department of Social Services

Responsible for conducting research, data analysis, and evaluation of health care del ivery through the N.Y.S. Medicaid program. Manage Claim Detail Special Re ports System (CD/SR), an automated Medicaid reporting system. Supervise data collection and analysis projects. Collect and analyze program data and prepare written reports including such information as d ocumentation of sources, description of anal yses and fi ndings, interpretation of results, and recommended courses of action. Activities related to the planning of st udies and t he provision of consul ting and advi sory services to Senior Staff and Unit Heads.

R epresent the Division of Medical Assistance on special projects pertaining to the development of a Soci al Services Traineeship and internship for entry-level professionals. Conduct recruitment of minority staff for t he Department of Social Services at various universities and conferences in New York State.

3/88 - 3/90 **Program Research Specialist II**, New York State Depa rtment of Soci al Services.

Collect and analyze program data and prepare written reports including such i nformation as docum entation of sources, description of analyses and findings, interpretation of resul ts, and recommended courses of action to program staff. Conduct research, data analysis, and evaluation of health care delivery .

R epresent the Division of Medical Assistance on special projects pertaining to the development of a Soci al Services Traineeship and internship for entry-level professionals. Conduct recruitment of minority staff for t he Department of Social Services at various universities and conferences in New York State.

Act ing Supervisor of the Claim Detail Special Reports System. Responsible for creation of management reports, data analysis, and evaluation of Medicaid programs.

Trainer, _____ No Time To Lose, New York State Depa rtment of Soci al Services.

Trai n staff and personnel of nonprofit, state, and private-sector organizations in developing "Blueprints for Act ion" in high-need communities. Help facilitate inter-organizational action in the delivery of services to the poor . Receive Commissioner's Award in 1989.

Recruiter, _____ New York State Department of Social Services.

Recruit minority personnel for career opportunities with the State Department of Social Services . Represent the Departm ent at Colleges and Conferences throughout New York State.

5/87 - 3/88 **Medicaid Doctoral Intern**, New York State Depa rtment of Social Services, Division of Medical Assistance.

C onduct research on and analysis of Medicaid programs. Develop evaluation and cost benefit analysis of the Restricted Recipient Program. Evaluate the impact of restriction on Medicaid recipients. Conduct research, data analysis, and eval uation of heal th care delivery.

9/84 - 6/85 **Research, Evaluation, & Teaching Assistant**, Political Science Department, SUNY Binghamton

C onduct research, evaluation, and statistical analysis and produce and publish a written report on the socioeconomic and demographic issues facing the minority community in Broome County. Instruct three sections composed of twenty-five students each for a course in World Political Economy. Organized, presented lectures, administered and graded quizzes and facilitated understanding in global macro-economic issues.

8/82 - 2/83 **Research and Statistical Analyst**, Basic Village Services Project. Chemonics, Inc. / USAID, Cairo, Egypt

Particip ate in the research, evaluation, and devel opment of healthcare delivery system s, health clinics, disease control, family planning, sanitary and potable water systems in the Arab Public of Egypt.

MILITARY SERVICE RECORD:

8/85 - 12/86 **U.S. NAVY (Lebenon Era Veteran)**: E5 Honorabl e discharge/Certificate of Completion: Officer Candidate Preparatory School

OTHER WORK EXPERIENCE:

9/84 - 3/85 **Lecturer**, Broome County Urban League, Tri nity AME Zion Church, Binghamton, New York.

Prepare and present lectures on issues facing the minority community.

3/83 - 1/84 **Career Research Assistant**, Career Developm ent Center, SUNY Binghamton.

Assist students in their search for em ployment opportunities, managed the career resource area.

6/80 - 8/82 **Child Care Counselor**, Abbott House, Irvington, New York.

C ounsel emotionally disturbed teenagers. Maintain medication schedules. Establish a t rack and cam ping program. Supervise a ward and controlled violent behavior.

PRESENTATIONS:

1/01 - 3/01 **Albany Law School:** Presenter at two public forums on the Hudson River's impact on inner city communities.

Unitarian Society of Albany, New York: Guest speaker on sprawl and urban environmental issues.

NYS Black & Hispanic Legislative Caucus: Guest speaker on impact of urban sprawl

June 2000 **EPA Region II Award Recipient**, EPA Headquarters, New York, New York. Environmental Quality Award for highlighting the clean up of PCBs the Hudson River, raising awareness of lead in the environment and lead poisoning, and the growing incidence of asthma in the Albany area

1999 – 2002 **New York League of Conservation Voters, Board Member**, New York, New York. Former Statewide and current Capital Region Chapter Board of Directors member. Work on New York State Environmental Bond Act, Governors Superfund Task Force, and New York State Brownfields Coalition. Help found and establish Capital LCV Chapter office.

2/90 Published: A report on "M inority Staffing Trends i n the Albany City School District."

This report is a comprehensive research and eval uation of minority recruitment and staffing within the Albany City School District. Report presented to the Albany City School Board.

12/88 PAUR NOTE #29 - "Recipient Restriction Program Evaluation, 1983-1984.

Th is report is a statistical evaluation and cost benefit analysis of the New York State Departm ent of Social Services Recipient Restriction Program. This evaluation provides decision makers with a comprehensive analysis of the RRP program 's performance through 1984.

"Report to the Martin Luther King Commission on Proposed Memorial Sites", April 7, 1987.

"Dimensions of the Black Experience in Binghamton, New York," The Center for Social Analysis, March 1985.

"What Makes a Person M oral? Judgment from Within," *Harpur Journal*. Vol I, No. 2.

COMPUTER SKILLS/DECISION SUPPORT SYSTEMS:

Solid knowledge of MS Office 2000, Excel, Wordperfect, Word, dBase III & IV, Mapinfo, Project, Adobe Im aging products, Powerpoint, Lotus Notes, MapMarker Geocoding, Windows OS, Paradox, Symphony, and Harvard Graphi cs, computer imaging and document digitization.

LANGUAGE SKILLS:

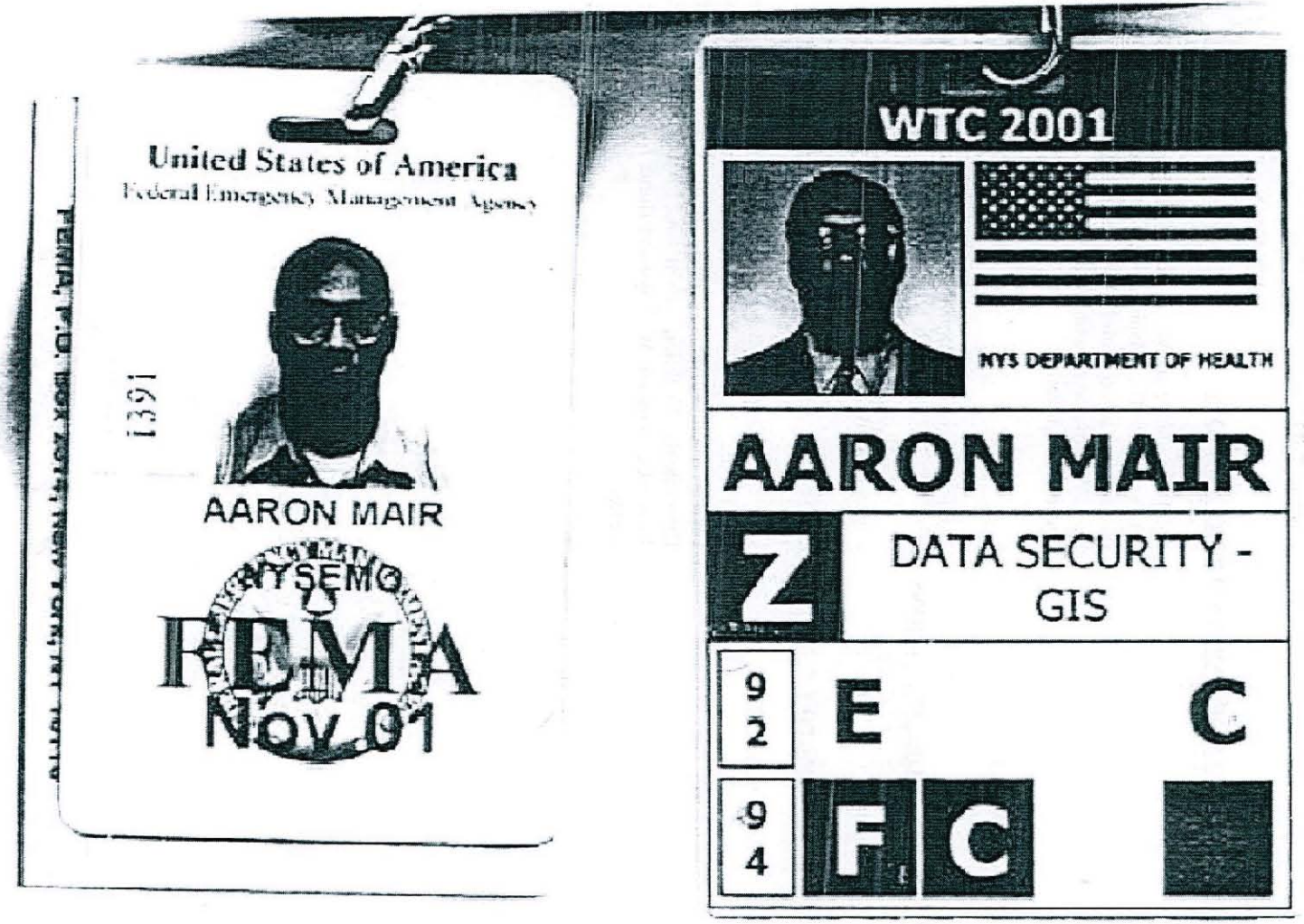
St rong background in Spanish languages

PROFESSIONAL ORGANIZATIONS:

Publ ic Employees Federation Steward

VOLUNTER ACTIVITIES & ASSOCIATIONS:

NAACP; Friends of Silvio Conte National Archives Center; W e The People - Sage College; Albany Public Schools; Albany Public Library - John Howe B ranch; Sierra Club; NRDC; Pocantico Brownfields Coalition; INBEJCC; Arbor Hill En vironmental Justice Corporation; W. Haywood Burns Environmental Education Center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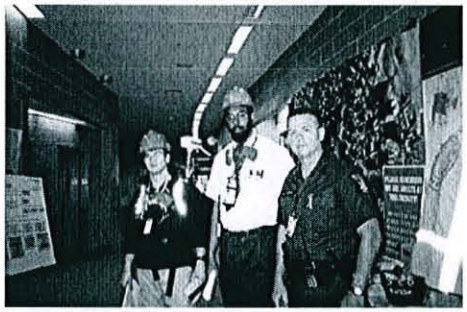

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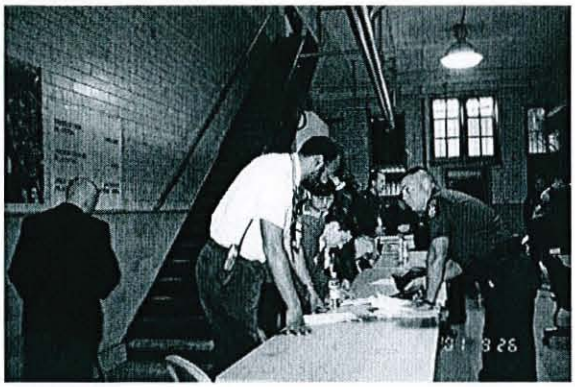

Deployment of OMM Geographical Information System Mapping Personnel at WTC Site.

World Trade Center Area of Operations

Aaron Mair's WTC Work Locations:

- West Sector (IS 89) Red Zone shaded buildings .
- Church Street Fire Station.
- OEM Pier 92 West 50th Street

Date: 09/13/2001-11/16/2001

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DENNIS C. VACCO
Attorney General

April 17, 1998

Aaron Mair
622 Manning Boulevard
Albany, New York 12210

Dear Mr. Mair: Aaron

It was a pleasure to meet you and have the privilege of sharing the podium with you when we announced the settlement in the ANSWERS case.

Your input and commitment were pivotal in allowing this case to be brought to a successful conclusion that will benefit the residents of Arbor Hill. I salute you for your efforts.

The W. Haywood Burns Environmental Education Center will become a unique addition to the neighborhood and improvements to the Tivoli preserve under your able oversight will, I'm sure, turn it into a unique urban oasis.

In talking with you, it was clear to me just how much of yourself you have put into what was obviously a labor of love. You have shown yourself to be the type of man who can make a difference.

For my part, I was pleased to be instrumental in a situation in which government was able to do the right thing for its constituents and, hopefully, play a role in making both Arbor Hill and the entire City of Albany a better place to live.

Sincerely,

Dennis

DENNIS C. VACCO
ATTORNEY GENERAL

Thanks for your very generous comments about our role in this success story. Let me know how else we can help you!

DCV/mec

The Capitol, Albany, N.Y. 12224-0341 • (518) 474-7330

40% Pre-Consumer Content, 10% Post Consumer Content

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT WORK PRODUCT
PREPARED IN ANTICIPATION OF LITIGATION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ARBOR HILL CONCERNED CITIZENS NEIGHBORHOOD ASSOCIATION and NATURAL RESOURCES DEFENSE COUNCIL, INC.,	)	Civil Action No.
Plaintiffs,	)	
v.	)	
CITY OF ALBANY, NEW YORK; MAYOR GERALD JENNINGS, in his official capacity; DEPARTMENT OF DEVELOPMENT AND PLANNING; COMMISSIONER GEORGE LEVEILLE, in his official capacity; ALBANY COMMUNITY DEVELOPMENT AGENCY; and DIRECTOR JOSEPH MONTANA, in his official capacity,	)	
Defendants.	)	

COMPLAINT

STATEMENT OF THE CASE

1. This is a citizen suit brought pursuant to section 20(a)(1)(B) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2619(a)(1)(B), to require Defendants to take all actions determined to be required to eliminate the risk of harm to human health and the environment stemming from their failure to direct, administer, and operate the City of

Albany's Lead Paint Abatement Program in compliance with federal law and regulations specifically enacted to protect the public from the hazards of lead-based paint activities.

2. Beginning on March 1, 2000, Defendants have failed to use only individuals certified by the U.S. Environmental Protection Agency ("EPA") to perform lead-based paint activities in low-income housing, including, but not limited to, inspections, risk assessments, abatements, and post-abatement clearance testing, in violation of TSCA. In addition, Defendants have failed to perform and ensure that others perform all lead-based paint activities in accordance with detailed work practice standards and procedures set forth by EPA, in violation of TSCA.

3. Lead is highly toxic and affects virtually every system of the body. Children are especially vulnerable to lead poisoning and, when exposed to high levels, can suffer from anemia, kidney damage, colic (severe stomachache), muscle weakness, brain damage, coma, convulsions, and even death. At lower levels, lead can affect a child's mental and physical growth, resulting in reduced IQ and attention span, reading and learning disabilities, hyperactivity, behavioral difficulties, low birth weight, and reduced stature.

4. Lead-based paint in housing is responsible for most cases of childhood lead poisoning today, and Defendants estimate that in the Lead Paint Abatement Program's target areas of Arbor Hill, West Hill, and the South End, ninety-five percent of children under age six (over 8,000 children) are at risk from lead-based paint hazards.

5. Plaintiffs are citizen groups whose members reside in the Lead Paint Abatement Program's target areas and are harmed by Defendants' failure to comply with federal law and regulations designed to protect public health from the serious risks associated with

lead-based paint activities. To redress this harm, Plaintiffs seek injunctive relief, as provided by section 20 of TSCA, 15 U.S.C. § 2619.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to section 20(a)(1)(B) of TSCA, 15 U.S.C. § 2619(a)(1)(B), and pursuant to 28 U.S.C. § 1331 (federal question). Section 20(a)(1)(B) of TSCA, 15 U.S.C. § 2619(a)(1)(B), allows affected citizens to bring suit against any " . . . governmental instrumentality or agency . . . who is alleged to be in violation of this chapter or any rule promulgated under . . . [Subchapter IV – Lead Exposure Reduction] . . . or order issued under . . . [Subchapter IV – Lead Exposure Reduction] . . . ." Section 20(a) of TSCA, 15 U.S.C. § 2619(a), empowers the Court to "restrain such violation[s]."

7. On May 22, 2002, Plaintiffs sent notice of their intent to file suit as required by section 20(b)(1)(A) of TSCA, 15 U.S.C. § 2619(b)(1)(A), to the Administrator of EPA, the Attorney General of the United States, and Defendants. A copy of the notice is appended hereto as Attachment 1.

8. In accordance with section 20(b)(1)(A) of TSCA, 15 U.S.C. § 2619(b)(1)(A), and 40 C.F.R. § 702.61(a), more than sixty days have passed since notice was served on EPA, the Attorney General, and Defendants. Neither EPA nor the Attorney General has taken any of the actions described in section 20(b)(1)(B) of TSCA, 15 U.S.C. § 2619(b)(1)(B).

9. Venue is proper in this District pursuant to section 20(a) of TSCA, 15 U.S.C. § 2619(a), because it is the "district in which the alleged violation occurred."

PARTIES

Plaintiffs

10. Plaintiff Arbor Hill Concerned Citizens Neighborhood Association (AHCCNA) is a fifty-year old, unincorporated, not-for-profit association of citizens who reside in the Albany community of Arbor Hill, adjacent to downtown Albany. AHCCNA's office is located at 622 North Manning Boulevard, Albany, New York 12210.

11. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a national, not-for-profit membership corporation organized under the laws of the State of New York, with offices in New York, Washington, D.C., Los Angeles, and San Francisco. Founded in 1970, NRDC has more than 445,000 members nationwide, including approximately fifty members who live in Albany, New York. NRDC's staff of scientists, lawyers, and environmental specialists is dedicated to protecting public health and the environment through litigation, scientific research, and policy advocacy. NRDC has long been active in working to reduce the harmful effects of toxic substances, including lead. NRDC's principal office is located at 40 West 20th Street, New York, New York 10011.

12. Individual members of AHCCNA and NRDC live, recreate, and/or utilize child care services in residential dwellings in Arbor Hill, South End, and West Hill that have been abated under, will be abated under, or whose owners are eligible and plan to apply to the Lead Paint Abatement Program. Defendants' pattern of blatant disregard for TSCA and the corresponding EPA implementing regulations may present a risk to the health of these individuals and their families, as described more fully below in paragraphs below.

Defendants

13. Defendant City of Albany, New York, is a municipality that has received three grants totaling approximately thirteen million dollars from the U.S. Department of Housing and Urban Development (HUD) to reduce lead-based paint hazards in low-income housing.

14. Defendant Mayor Gerald Jennings, in his official capacity, is chief executive officer for Defendant City of Albany and is currently serving in his third term, having first been elected in 1993.

15. Defendant Department of Development and Planning is a department within Defendant City of Albany that includes the divisions of Economic Development, Housing and Community Development, and Neighborhood Revitalization and Planning. The Division of Housing and Community Development houses Defendant Albany Community Development Agency.

16. Defendant Commissioner George Leveille, in his official capacity, is head of Defendant Department of Development and Planning.

17. Defendant Albany Community Development Agency coordinates all housing activities in the City of Albany and is responsible for administering and operating the federally funded Lead Paint Abatement Program, which provides grants to qualified homeowners for the removal and/or containment of lead-based paint hazards.

18. Defendant Director Joseph Montana, in his official capacity, is head of Defendant Albany Community Development Agency and has overseen the Lead Paint Abatement Program since its inception in 1995.

STATUTORY AND REGULATORY BACKGROUND

19. In part, Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692, entitled "Lead Exposure Reduction," sets forth a series of mandates for EPA.

20. Section 402 of TSCA, 15 U.S.C. § 2682, entitled "Lead-based paint activities training and certification," requires EPA to ". . . promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors . . . ."

21. Pursuant to this mandate, EPA implemented regulations at 40 C.F.R. Part 745, Subpart L, that set forth procedures and requirements for the accreditation of lead-based paint activities training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities.

22. Entitled "Lead-Based Paint Activities," 40 C.F.R. Part 745, Subpart L, applies to states, such as New York, that do not have authorized State lead programs. 40 C.F.R. § 745.220(b). These regulations require that virtually all lead-based paint activities be performed by EPA-certified individuals and set forth detailed work practice standards for such activities.

23. The section of Subpart L entitled "Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities," 40 C.F.R. § 745.226, states that "[i]t shall be a violation of TSCA for an individual to conduct

any of the lead-based paint activities described in § 745.227 [including, but not limited to, inspections, risk assessments, abatements, and post-abatement clearance] after March 1, 2000, if that individual has not been certified by EPA . . . ."

40 C.F.R. § 745.226(a)(5). In addition, 40 C.F.R. § 745.226(f) states that, "[a]ll firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 [including, but not limited to, inspections, risk assessments, abatements, and post-abatement clearance] after March 1, 2000, shall be certified by EPA."

24. The section of Subpart L entitled "Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities," 40 C.F.R. § 745.227, requires that "[b]eginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section." 40 C.F.R. § 745.227(a)(1).

25. The section of Subpart L entitled "Lead-based paint activities requirements," 40 C.F.R. § 745.233, mandates that "lead-based paint activities . . . shall only be conducted according to the procedures and work practice standards contained in § 745.227. . . . No individual or firm may offer to perform or perform any lead-based paint activity . . . unless certified to perform that activity according to the procedures in § 745.226."

26. With respect to enforcement, Subpart L makes it clear that "failure or refusal to comply with any requirement of §§ 745.225 ["Accreditation of training programs"], 745.226 ["Certification of individuals and firms engaged in lead-based paint activities"], 745.227 ["Work practice standards for conducting lead-based paint activities"], or 745.233 ["Lead-

based paint activities requirements"] is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. §§ 2614, 2689)." 40 C.F.R. § 745.235(a).

GENERAL ALLEGATIONS

The Hazards of Lead-Based Paint and Lead Poisoning

27. According to the Centers for Disease Control ("CDC") and the Agency for Toxic Substances and Disease Registry, childhood lead poisoning is the most common environmental disease of young children, eclipsing all other environmental health hazards found in the residential environment.

28. Lead is highly toxic and can affect virtually every organ and system in the body, particularly the central nervous system. At high levels of exposure, lead can severely damage the brain and kidneys in adults and children, cause miscarriage, and damage reproductive organs.

29. Children are more vulnerable to lead poisoning than adults. At high levels, lead poisoning can lead to anemia, kidney damage, colic (severe stomachache), muscle weakness, brain damage, coma, convulsions and even death. At lower levels, lead can affect a child's mental and physical growth, and result in reduced IQ and attention span, reading and learning disabilities, hyperactivity, behavioral difficulties, low birth weight, and reduced stature.

30. The pathways of exposure to lead are numerous. For example, babies and children can swallow and breathe lead that has mixed with dirt, dust, or sand while they play on the floor in their homes or the ground in their backyards. In some cases, children eat paint chips that may contain very large amounts of lead, particularly in and around older houses that were painted with lead-based paint.

31. While the removal of lead over from gasoline, food canning, and other sources has reduced population blood levels over the past twenty years, nearly one million children still have elevated levels of lead in their blood equal to or greater than the CDC level of concern. HUD has determined that lead-based paint in housing is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

32. However, the vast majority of childhood lead poisoning cases go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

33. Defendants state that approximately ninety-five percent of the housing stock in Arbor Hill, West Hill, and the South End was built before 1978 (the year lead-based paint was banned for residential use) and is assumed to be a risk to children.

34. Moreover, Defendants themselves estimate that ninety-five percent of children under age six (over 8,000 children) in these three neighborhoods are at risk from lead-based paint hazards.

City of Albany Lead Paint Abatement Program

35. In April 1995, New York State and Defendants received a six million dollar grant from HUD's Office of Healthy Homes and Lead Hazard Control (Grant # NYLAG0051-95) to evaluate and reduce lead-based paint hazards in private housing rented or owned by low-income families in the Albany neighborhoods of Arbor Hill, West Hill, and the South End, with Defendant Albany Community Development Agency as the sole sub-grantee.

36. Throughout the life of Grant # NYLAG0051-95, Defendant Albany Community Development Agency directed, was responsible for, and administered the City of Albany's Lead Paint Abatement Program, including, but not limited to, supervising lead-based paint

activities performed by private lead abatement contractors; conducting in progress inspections; maintaining contact with property owners and tenants when working with an independent environmental consultant on inspections, risk assessments, abatement contracts, and clearance testing; conducting eligibility screenings; preparing work write-ups and cost estimates; arranging temporary relocation for tenants; handling property owner and private lead abatement contractor awards and agreements; disbursing funds directly to private lead abatement contractors; and assisting in the identification of cost-effective and productive measures of hazard removal through the inspection and risk assessment process.

37. Approximately 355 residential dwellings were abated under Grant # NYLAG0051-95.

38. In January 2000, Defendants received a four million dollar grant from HUD (Grant #NYLHB0144-99) to evaluate and reduce lead-based paint hazards in the Albany neighborhoods of Arbor Hill, West Hill, and the South End.

39. Throughout the life of Grant # NYLHB0144-99, Defendant Albany Community Development Agency directed, was responsible for, and administered the City of Albany's Lead Paint Abatement Program, including, but not limited to, selecting eligible housing; implementing hazard control specifications; jointly performing initial inspections and risk assessments with an independent environmental consultant; soliciting and managing private lead abatement contractors; arranging temporary relocation of residents; inspecting hazard control activities; preparing risk assessments, work write-ups, cost estimates, and contract documents; and owning and managing relocation sites.

40. Approximately 292 residential dwellings were abated under Grant # NYLHB0144-99.

41. In December 2001, Defendants received a three million dollar grant from HUD (Grant # NYLHB0188-01) to evaluate and reduce lead-based paint hazards in the Albany neighborhoods of Arbor Hill, West Hill, and the South End.

42. Currently, under Grant # NYLHB0188-01, Defendant Albany Community Development Agency directs, is responsible for, and administers the City of Albany's Lead Paint Abatement Program by performing initial inspections, risk assessments, and clearance testing; soliciting and managing private lead abatement contractors; arranging temporary relocation of residents; inspecting hazard control activities; preparing risk assessments, work write-ups, cost estimates, and contract documents; and authorizing payments for lead-based paint activities.

43. Beginning on March 1, 2000, Defendants have directed, administered, and operated the Lead Paint Abatement Program in violation of various requirements of 40 C.F.R. Part 745, Subpart L, regulations specifically enacted to protect public health from the hazards associated with lead-based paint activities.

44. Defendants are in violation of 40 C.F.R. § 745.226(a)(5) by failing to utilize only individuals properly certified by EPA to conduct various lead-based paint activities, including, but not limited to, inspections, risk assessments, abatements, and post-abatement clearance testing.

45. Defendant Albany Community Development Agency is in violation of 40 C.F.R. § 745.226(f) by having performed lead-based paint activities as a firm, including, but not

limited to, inspections, risk assessments, and post-abatement clearance testing, without proper certification from EPA.

46. Defendants are in violation of 40 C.F.R. § 745.227(a)(1) by failing to conduct various lead-based paint activities according to the work practice standards set forth in such section.

47. Defendants are in violation of 40 C.F.R. § 745.233 which mandates that "lead-based paint activities . . . shall only be conducted according to the procedures and work practice standards contained in § 745.227. . . . No individual or firm may offer to perform or perform any lead-based paint activity . . . unless certified to perform that activity according to the procedures in § 745.226."

48. By failing to comply with various requirements of 40 C.F.R. §§ 745.226, 745.227 and 745.233, Defendants have committed prohibited acts under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

49. As a result of defendants' pattern of blatant disregard of the mandates of 40 C.F.R. Part 745, Subpart L, hundreds of low-income children in Arbor Hill, West Hill, and the South End may be exposed to the grave health risks associated with lead-based paint activities.

FIRST CLAIM FOR RELIEF: Inspections

50. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

51. Forty C.F.R. § 745.227(b)(1) states that "[a]n inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph."

52. Defendants are in violation of 40 C.F.R. § 745.227(b)(1) by failing to use only EPA-certified inspectors or risk assessors to conduct inspections at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

53. Furthermore, since Defendants used uncertified individuals to conduct inspections at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program, on information and belief, Defendants are also in violation of 40 C.F.R. § 745.227(b)(2) and (b)(3), which set forth the required procedures for conducting inspections.

54. In addition, Defendants are in violation of 40 C.F.R. § 745.227(b)(4), by failing to have proper inspection reports prepared by EPA-certified inspectors or risk assessors for numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

55. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

56. Unless restrained by an order of this Court, Defendants will continue to be in violation of TSCA.

SECOND CLAIM FOR RELIEF: Risk Assessments

57. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

58. Forty C.F.R. § 745.227(d)(1) states that "[a] risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph."

59. Defendants are in violation of 40 C.F.R. § 745.227(d)(1) by failing to use only EPA-certified risk assessors to conduct risk assessments at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

60. Defendants are also in violation of 40 C.F.R. § 745.227(d)(8), which requires that soil samples be taken in specified areas during the course of a risk assessment. Furthermore, since Defendants used uncertified individuals to conduct risk assessments at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program, Defendants, on information and belief, are also in violation of other provisions of 40 C.F.R. § 745.227(d)(2) through (d)(10), which set forth the procedures for conducting risk assessments.

61. In addition, on information and belief, Defendants are in violation of 40 C.F.R. § 745.227(d)(11) by failing to have proper risk assessment reports prepared by EPA-certified risk assessors for numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

62. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

63. Unless restrained by an order of this Court, Defendants will continue to be in violation of TSCA.

THIRD CLAIM FOR RELIEF: Abatements

64. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

65. Forty C.F.R. § 745.227(e)(1), provides that "[a]n abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph."

66. Defendants are in violation of 40 C.F.R. § 745.227(e)(1) by failing to use only individuals certified by EPA to conduct abatements at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

67. In addition, 40 C.F.R. § 745.227(e)(2) requires, in part, that an EPA-certified supervisor "be onsite during all work site preparation and during the post-abatement cleanup of work areas," in order to ensure "that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements." 40 C.F.R. § 745.227(e)(3).

68. Defendants are in violation of 40 C.F.R. § 745.227(e)(2) by failing to utilize an EPA-certified supervisor onsite during all work site preparation and post-abatement cleanup at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

69. Furthermore, on information and belief, Defendants are in violation of 40 C.F.R. § 745.227(e)(5), by failing to have written occupant protection plans prepared by an EPA-certified supervisor or project designer for numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

70. Since Defendants used uncertified individuals to conduct abatements at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program, Defendants, on information and belief, are also in violation of the work practice standards for abatements set forth in 40 C.F.R. § 745.227(e)(6) and (e)(7).

71. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

72. Unless restrained by an order of this Court, Defendants will continue to be in violation of TSCA.

FOURTH CLAIM FOR RELIEF: Post-Abatement Clearance

73. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

74. Forty C.F.R. § 745.227(e)(8) mandates that "post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor."

75. Defendants are in violation of 40 C.F.R. § 745.227(e)(8), by failing to have only EPA-certified inspectors or risk assessors conduct the post-abatement clearance procedures required by 40 C.F.R. § 745.227(e)(8)(i) through (e)(8)(viii) at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

76. In addition, Defendants are in violation of 40 C.F.R. § 745.227(e)(8)(iv), by failing to wait at least one hour after completion of final post-abatement cleanup before taking dust samples for clearance purposes at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program. Moreover, since Defendants used uncertified individuals to perform post-abatement clearance procedures at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program, Defendants, on information and belief, are also in violation of other work practice requirements enumerated in 40 C.F.R. § 745.227(e)(8)(i) through (e)(8)(viii).

77. Furthermore, on information and belief, Defendants are in violation of 40 C.F.R. § 745.227(e)(10), by failing to have an EPA-certified supervisor or project designer prepare abatement reports that include the information required by 40 C.F.R. § 745.227(e)(10)(i) through (e)(10)(vi), for numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

78. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

79. Unless restrained by an order of this Court, Defendants will continue to be in violation of TSCA.

FIFTH CLAIM FOR RELIEF: Collection and Analysis of Paint Chip, Dust, or Soil Samples

80. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

81. Forty C.F.R. § 745.227(f)(1) requires that ". . . paint chip, dust, or soil samples . . . shall be [c]ollected by persons certified by EPA as an inspector or risk assessor . . . ."

82. Defendants are in violation of 40 C.F.R. § 745.227(f)(1) by failing to have only EPA-certified inspectors or risk assessors collect paint chip, dust, or soil samples at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

83. Moreover, Defendants are in violation of 40 C.F.R. § 745.227(f)(2) by failing to have only laboratories recognized by EPA, pursuant to Section 405(b) of TSCA, 15 U.S.C.

§ 2685(b), analyze paint chip, dust, or soil samples for numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

84. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

85. Unless restrained by an order of this Court, Defendants will continue to be in violation of TSCA.

SIXTH CLAIM FOR RELIEF: Defendant ACDA's Certification

86. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

87. Defendant Albany Community Development Agency is in violation of 40 C.F.R. § 745.226(f) by having performed lead-based paint activities as a firm, including, but not limited to, lead inspections, risk assessments, and post-abatement clearance testing, without proper certification from EPA, at numerous residential dwellings abated under the federally funded Lead Paint Abatement Program.

88. According to EPA, Defendant Albany Community Development Agency did not become an EPA-certified firm until December 27, 2001, many months after the agency began performing lead-based paint activities and the March 1, 2000 certification deadline set forth by 40 C.F.R. § 745.226(f).

89. Failure or refusal to comply with any requirement of §§ 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689. 40 C.F.R. § 745.235(a).

90. Unless restrained by an order of this Court, Defendants will continue to be in violation TSCA.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 89 above, Plaintiffs request that this Court:

1. Permanently enjoin Defendants from directing, administering, and operating the City of Albany Lead Paint Abatement Program, except in accordance with TSCA and other applicable regulatory requirements;

2. Order Defendants to remedy their violations of TSCA;

3. Order Defendants to take other appropriate actions to remedy, mitigate, or offset the harm to public health and the environment caused by the violations of TSCA alleged above, including, but not limited to, (a) ensuring that all residential dwellings that were improperly abated are safe for human habitation, and (b) conducting medical monitoring of those residents who may be exposed to the grave health risks of lead-based paint poisoning;

4. Order Defendants to pay Plaintiffs' attorneys' fees, expert witness fees, and costs incurred in prosecuting this action; and

5. Grant such other relief as the Court deems just and proper.

Dated: July ____, 2002

Respectfully submitted,

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HEALTH CONSULTATION

Site Summary

COLONIE SITE
(Aliases: COLONIE INTERIM STORAGE SITE and
FORMERLY NATIONAL LEAD INDUSTRIES)
ALBANY, ALBANY COUNTY, NEW YORK

INTRODUCTION

The 11.2 acre Colonie Site is at 1130 Central Avenue in Colonie, Albany County, New York. It includes the property formerly owned by National Lead (NL) Industries as well as three vicinity properties - a Niagara Mohawk substation, Town of Colonie property, and CSX rail property. The boundary between Colonie and the city of Albany is just south of the site. The former NL property is bounded by a wooded lot on the northwest, Consolidated Rail Corporation (Conrail) railroad tracks on the southwest and south, commercial property on the east, Central Avenue on the northeast, and a Niagara Mohawk electrical substation on the north (USDOE 1995).

At a public meeting held by the U.S. Army Corps of Engineers (USACE) on July 11, 2001, several community members expressed concern about potential adverse health effects from past operations at the Colonie Site. In response to those concerns, USACE requested that the Agency for Toxic Substances and Disease Registry (ATSDR) conduct a health evaluation of potential exposures to the community from past operations.

What is a public health evaluation?

A public health evaluation assesses data and information to determine whether releases of hazardous substances into the environment affect public health. Public health assessments also identify actions needed to reduce or eliminate exposures that could cause human health effects.

ATSDR conducted a site visit of the Colonie Site September 9-13, 2002. The purpose of the visit was to begin collecting information necessary for conducting a public health evaluation. During the visit, ATSDR staff met with local community groups to discuss community health concerns. ATSDR staff also met with representatives of the New York State Department of Health, the New York State Department of Environmental Conservation, Albany County Health Department, and the New York State Department of Labor. ATSDR staff met with representatives from USACE and toured the Colonie Site. In addition, ATSDR staff were able to review and copy many documents related to the site. ATSDR staff attended the USACE's public meeting on September 12 and spoke with several members of the community about their health concerns. In addition, ATSDR staff attended a community meeting held on November 21, 2002 discussing a preliminary lead soil sampling plan for properties surrounding the former NL plant being developed by the New York State Department of Health (NYSDOH) and the New York State Department of Environmental Conservation (NYSDEC). As a result of these meetings and a preliminary survey of the available data, ATSDR will evaluate available information to try to answer the following questions in our health evaluation:

1. *Were people exposed to harmful levels of lead in the past, present, and future and depleted uranium (DU) in the past by contacting soil when playing or gardening?*

2. *In the past, could people have potentially breathed DU, lead, and other possible contaminants from air emissions from NL's chip burner and other onsite sources?*

3. *Although it is unlikely, in the future could people potentially breathe indoor air with volatile organic compounds (VOCs) from contaminated groundwater?*

BACKGROUND

History of the Colonie Site

In 1923, the Embossing Company began industrial operations at the present day site manufacturing wood products and toys. In 1927, Magnus Metal Company purchased the property and began operating a brass foundry for manufacturing railroad parts, including brass components cast in sand molds and brass bearing housings with surfaces of babbitt metal (an alloy of lead, copper, and antimony) (USACE 2001b).

In 1937, National Lead Industries purchased the facility and an adjacent lot containing a portion of the former Patroon Lake. NL continued operating the brass foundry and began filling Patroon Lake with casting sand sometime before 1941. After World War II, NL began casting aluminum mainframes for airplanes, and in 1958, the nuclear division of NL began producing items manufactured from uranium and thorium under a license from the Atomic Energy Commission (AEC; this agency was split into the US Nuclear Regulatory Commission (civilian programs) and the US Department of Energy (government/military programs)). Operation of the brass foundry was discontinued in 1960 (USACE 2001b).

From 1958 to 1984, NL operations used radioactive materials consisting mostly of depleted uranium (DU), although smaller amounts of thorium and enriched uranium were also used between 1960 and 1972. Operations reduced depleted uranium tetrafluoride to depleted uranium metal which was then made into shielding components, ballast weights, and projectiles. In addition, from 1966 to 1972, NL manufactured fuel from enriched uranium for experimental nuclear reactors (USACE 2001b).

Other processes at NL included an electroplating operation for plating uranium with nickel and cadmium. Chemicals used included: nickel sulfamate, sodium cyanide, ferric chloride, nitric acid, silicate phosphate, iridite (a chromium brightener), cadmium metal, nickel metal, boric acid, and perchloroethylene (PCE). There is little or no information about how or where most of these materials were disposed because there are no disposal records. However, letters from NL to the Atomic Energy Commission indicate that about 55 cubic yards of graphite, slag, refractory, uranium oxide, insoluble oil, metal scrap, and combustible trash were buried in the Patroon Lake in 1961, as per their license. Other chemical wastes and packaged chemicals used at the site included acids, bases, degreasing agents, carbon tetrachloride, benzene, polychlorinated biphenyls (PCBs), cyanide, heavy metals, and asbestos (USACE 2001b).

In February 1980, the New York State Supreme Court issued a temporary restraining order barring NL from operating the facility because of its airborne releases of uranium compounds. In May 1980, the judicial order was amended to allow limited operation at the plant. This order also required the company to begin an independent investigation assessing all adverse environmental conditions in onsite soil and on the off-site vicinity properties that may have been caused by airborne discharges from the plant. Teledyne Isotopes was hired to perform a radiological survey of the NL property and surrounding properties. In 1984, NL was closed by state officials because continuing airborne releases exceeded state standards (USACE 2001b).

Remediation at the Colonie Site

After the closure of the NL plant in 1984, Congress authorized the US Department of Energy (USDOE) to remediate the property under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The Secretary of Energy accepted an offer from NL to donate the land, buildings, and equipment to expedite the cleanup (USACE 2001b). From 1984 to 1997, the Colonie Site was managed by USDOE. Between 1984 and 1988, Oak Ridge National Laboratory (ORNL) performed radiological surveys of 219 individual properties surrounding the former NL property. Of these, 56 vicinity properties were contaminated with concentrations of radioactive material exceeding 35 picocuries per gram (pCi/g) for uranium-238 (U-238). Fifty-three of the 56 vicinity properties were cleaned up between 1984 and 1988 by removal of DU contaminated soil, typically concentrated in the upper 2 inches (USDOE 1995). The waste soil was held in interim storage on the Colonie Site within an onsite building. In 1995, this material was bagged and shipped to an offsite disposal facility (USACE 2001a). An Engineering Evaluation/Cost Analysis, finalized by USDOE in 1995, outlined the remediation of the former NL property and the remaining three vicinity properties.

By Congressional action in 1997, USACE assumed control of the Colonie Site and the responsibility for the remaining cleanup activities. USACE has remediated one of the three vicinity properties and major portions of the Colonie Site proper. USACE plans to complete the soil remedial work in June 2004. USACE is still evaluating groundwater.

DISCUSSION

1. *Were people exposed to harmful levels of lead in the past, present, and future and depleted uranium (DU) in the past by contacting soil when playing or gardening?*

   In 1984, ORNL determined that radioactive contaminants were deposited onto off-site residential properties from on-site air releases at NL when the plant was operational. From 1984 to 1988, 219 properties were sampled for radioactive contaminants, including U-238, and 53 were remediated to less than 35 pCi/g of U-238. However, none of the properties were analyzed for lead that may have also been deposited from air releases. Soil removal at properties contaminated with DU would likely have removed lead contaminated soil as well, but lead contamination could remain at properties that were not cleaned up. Currently, the New York State Department of Health (NYSDOH) and the New York State Department of Environmental Conservation (NYSDEC) are developing a preliminary lead soil sampling plan for the areas surrounding the former NL plant. Because children are especially sensitive to the effects of lead, ATSDR recommends that information about children living in nearby properties, such as age and length of residence, be collected during the sampling efforts. ATSDR will review the data collected from the NYSDOH/NYSDEC sampling to determine if lead levels present a public health concern.

   Many of the homes in the residential areas surrounding NL were built before 1950 and could have both interior and exterior lead paint, which has been shown to be a major contributor to lead poisoning in children. The Centers for Disease Control and Prevention (CDC) recommends that states develop a plan to find children who may be exposed to lead and have their blood tested for lead. They make basic recommendations for states to follow. These include testing children at ages 1 and 2. Children who are 3 to 6 years old should be tested if they have never been tested for lead before and they receive services from public assistance programs for the poor such as Medicaid or the Supplemental Food Program for Women, Infants and Children (WIC); if they live in a building or frequently visit a house built before 1950; if they visit a home (house or apartment) built before 1978 that has been recently remodeled; or if they have a brother, sister, or playmate who has had lead poisoning (ATSDR 1999). ATSDR recommends that parents concerned about their children's exposure to lead follow CDC's guidelines and have their children's blood lead levels tested by their physician.

   Between 1984 and 1988, DOE remediated DU contaminated soil at 53 vicinity properties, including both commercial and residential properties. Prior to remediation there may have been a public health impact from contact with the soil. ATSDR will review data, including the sampling results for DU in soils at these vicinity properties, to determine whether illness or disease in people who were exposed to the soil would be expected.

2. *In the past, could people have potentially breathed harmful levels of DU, lead, and other possible contaminants from air emissions from NL's chip burner and other onsite sources?*

   NL operated a chip burner to dispose of unused DU from 1958 to1984. During this time period, NL's emissions exceeded state standards. People in the community surrounding NL may have been exposed to this contamination. ATSDR is currently looking for information and data related to the use of the chip burner and the levels of emissions. ATSDR reviewed records at the NYSDEC, NYSDOH, and the New York State Department of Labor, and the Albany County Department of Health. ATSDR found limited data of uranium stack emissions from the former NL plant during 1979-1984. ATSDR is currently in the process of accessing records at the New York State Office of the Attorney General. If relevant information is available, ATSDR will review the data to determine if past exposures to air emissions could have resulted in adverse health effects. ATSDR will also look at the combined exposure to DU from soil and air emissions.

3. *Although it is unlikely, in the future could people potentially breathe indoor air with volatile organic compounds (VOCs) from contaminated groundwater?*

   The groundwater below the Colonie Site was contaminated with VOCs by operations at the NL plant. USACE is currently remediating the groundwater. Sampling in off-site monitoring wells indicates the migration of groundwater contaminated at low levels. In July and August of 2002, USACE sampled the indoor air of five

residences adjacent to the Colonie Site to determine if VOCs detected in groundwater originating from the Colonie Site had affected indoor air quality of those homes. The results indicate that currently there is no impact to indoor air quality from contaminated groundwater. USACE is planning a second round of air sampling in the same residences during the winter months when contaminant concentrations in indoor air may potentially be higher. ATSDR will review the results from the second round of air sampling as well as groundwater sampling results to determine the likelihood of indoor air contamination and if adverse health effects could be expected if there is exposure.

COMMUNITY HEALTH CONCERNS

1. The community is concerned that past emissions from the site have caused adverse health effects such as various types of cancer, birth defects, Down syndrome, rashes, and endometriosis. ATSDR will evaluate the potential exposure pathways discussed above and review available literature to determine the plausibility that those exposures, if found, may have resulted in disease.

2. A citizen is concerned that possible lead contamination in her yard could harm her children and grandchildren. ATSDR will address this concern as outlined in the discussion section of this document. ATSDR recommends that parents concerned about their children's exposure to lead follow CDC's guidelines as described in the discussion section and have their children's blood lead levels tested by their physician.

3. A citizen's group is concerned that people, especially children, could have been exposed to DU by playing with pellets and abandoned drums on the property in the past. ATSDR will review accounts of these activities and available scientific information to determine if illness or disease in people would be expected from such exposures.

4. Citizens are concerned that lead and depleted uranium contamination in the soil in residential vegetable gardens could have ended up in their food. ATSDR will review available environmental data and scientific information to determine if uptake is possible and would have potentially resulted in harmful levels in foods.

5. A community group is concerned about exposure to DU, lead, and other possible contaminants in the surface water of the Patroon Creek in and around Tivoli Lake while swimming and wading. The watershed is located in an industrial area and is subject to contamination from several point and non-point sources of pollution. Although not classified by New York State for primary contact recreation, it is reported that some parts of the Patroon Creek have been used for many years for swimming and wading by people living nearby. Some uranium and lead have been found in sediments in the Patroon Creek watershed downstream of the Colonie Site. ATSDR will review information about the watershed and contaminants, including surface water and sediment sampling data from the unnamed tributary leaving the Colonie Site, to determine the public health impact from past contact with the water. However, surface water contact is generally less of a hazard than ingestion, especially with contaminants such as lead and depleted uranium. Therefore, unless levels are extremely high, health effects from contact with the surface water from the former NL Industries would not be expected.

   ATSDR is working with USACE, community groups, and state and local agencies to identify any remaining hazards.

PUBLIC HEALTH ACTION PLAN

1. ATSDR will review available data for each of the issues and concerns outlined above and determine the public health impact for the exposure pathways.

2. The NYSDEC and NYSDOH will conduct soil sampling for lead in areas around the Colonie Site.

3. The USACE will sample indoor air in homes for potential effects on air quality from contaminants in ground water plumes

FREQUENTLY ASKED QUESTIONS ABOUT ATSDR'S PUBLIC HEALTH EVALUATION

Is a public health evaluation the same thing as a medical exam or a community health study?

No, a public health evaluation is not the same thing as a medical exam or a community health study. An ATSDR public health evaluation reviews available information about hazardous substances at a site and evaluates whether exposure to them might cause any harm to people.

Public health evaluations consider–

- what the levels (or concentrations) of hazardous substances are
- whether people might be exposed to contamination and how (through exposure pathways such as breathing air, drinking or contacting water, contacting or eating soil, or eating food)
- what harm the substances might cause to people (or the toxicity of the contaminant)
- whether working or living nearby might affect people's health
- other dangers to people, such as unsafe buildings, abandoned mine shafts, or other physical hazards

Who can I contact if I have questions?

You can contact ATSDR's toll-free information line at: 1-888-42-ATSDR (1-888-422-8737). Please mention that you are calling about the Colonie Site.

More information about ATSDR can be found on the internet at http://www.atsdr.cdc.gov

REFERENCES

[ATSDR] Agency for Toxic Substances and Disease Registry. 1999b. Toxicological profile for lead. Atlanta: US Department of Health and Human Services. July.

[USACE] US Army Corps of Engineers. 2001a. Proposed action memorandum for soil removal at the Colonie Site, Colonie, NY. June.

[USACE] US Army Corps of Engineers. 2001b. Letter to Arthur Block from Stuart Piken concerning the Colonie Site. New York, New York. July 25.

[USDOE] US Department of Energy. 1995. Engineering evaluation and cost analysis (EE/CA) for the Colonie Site. Oak Ridge. September.

ATSDR ACTION DATES

Initial site visit: September 9-13, 2002
USACE Public meeting: September 12, 2002
Community meeting: November 21, 2002

PERSONS MET WITH

Mr. Aaron Mair, Arbor Hill Environmental Justice Corporation
Mr. Rodney Davis, Arbor Hill Environmental Justice Corporation
Mr. Steve Lukowski, Albany County Department of Health
Mr. Ronald Groves, Albany County Department of Health

Ms. Anne Rabe, Citizens' Environmental Coalition
Mr. Tom Ellis, Citizens' Environmental Coalition
Mr. Clifton VanGuilder, New York State Department of Environmental Conservation
Mr. Paul Merges, New York State Department of Environmental Conservation
Mr. John Abunaw, New York State Department of Environmental Conservation
Ms. Barbara Youngberg, New York State Department of Environmental Conservation
Mr. Paul Patel, New York State Department of Environmental Conservation
Mr. Kent Johnson, New York State Department of Environmental Conservation
Ms. Adela Salame-Alfie, New York State Department of Health
Mr. Jerry Collins, New York State Department of Health
Mr. John Sheehan, New York State Department of Health
Mr. Don Miles, New York State Department of Health
Mr. Mike Rivara, New York State Department of Health
Mr. William Varcasio, New York State Department of Labor
Mr. James Moore, US Army Corps of Engineers
Mr. Joe Pierce, US Army Corps of Engineers
Mr. Tony Sheeran, Shaw E&I
Ms. Karol Meyerhoffer, Shaw E&I
Mr. Dave Sendra, Shaw E&I
Mr. Michael White, USACHPPM
Mr. Jim Mullikin, USACHPPM

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Table of Contents