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August 3, 2015

Via Registered Mail (Return Receipt Requested) & Email

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SEMS, Inc.  
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Baton Rouge, LA 70815

**Re: Notice of Intent to File Suit Pursuant to the Resource Conservation and Recovery Act 42 U.S.C. § 6972(b)(1) for hazardous waste violations at the Booker T. Washington High School, AI No. 36659**

Dear Mr. White, Mr. Dobard, Dr. Lewis, Mr. Perret, Mr. Songy, Mr. Udovic, and Mr. Morgan:

We write on behalf of the Walter L. Cohen Alumni Association<sup>1</sup> and Sierra Club to provide you with this Notice of Intent to File Suit pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(b)(1) & (2). This Notice concerns RCRA violations

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<sup>1</sup> The Walter L. Cohen Alumni Association is a nonprofit organization incorporated in Louisiana that is dedicated to serving the welfare of students attending the Cohen College Prep High School in New Orleans, Louisiana, which is a charter school operated by the New Orleans College Preparatory Academies. The association includes parents of current students.

by your agencies and companies involving demolition, remediation, and construction activities on the site of the Booker T. Washington High School located at 1201 South Roman Street, New Orleans, Louisiana 70125. If we are unable to resolve this matter cooperatively, the lawsuit will proceed under 42 U.S.C. § 6972(a)(1)(A) (violation of RCRA regulations and prohibitions) and/or 42 U.S.C. § 6972(a)(1)(B) (abatement of conditions that may present an imminent and substantial endangerment to health or the environment.)

RCRA, 42 U.S.C. § 6972(b)(1) empowers plaintiffs to bring suit “immediately” in the case of an alleged violation of RCRA’s hazardous waste regulations. In other words, RCRA does not mandate a 60-day waiting period under the circumstances of the Booker T. Washington High School site. In the interests of promoting a cooperative solution, however, the Walter L. Cohen Alumni Association’s and Sierra Club’s present intention is to wait for a reasonable time after you have received this Notice before filing the lawsuit. Our hope is that you will contact us to indicate a willingness to suspend current operations until performing a lawful determination under LAC 33:V.1103 (which implements 40 C.F.R. § 262.11) that includes a full characterization of sources of remediation waste using the Toxicity Characteristic Leaching Procedure (TCLP).

Constructing a new school on the contaminated property of the Booker T. Washington School for predominately African American students who are to be relocated from the current Walter L. Cohen School building—where there is no record of contamination and which is located on valuable real estate—would extend the history of racial injustice that this City should be striving to move beyond.

### ***Responsible Parties***

In this notice, we will refer to the people responsible for the violations alleged in this Notice collectively as “you.” Those responsible parties are:

1. John White, in his official capacity as Superintendent of the Louisiana Department of Education;
2. Patrick Dobard, in his official capacity as Superintendent of the Recovery School District;
3. The Orleans Parish School Board;
4. Jacobs Engineering/CSRS Consortium;
5. CSRS, Inc.;
6. Jacobs Engineering Group Inc.; and
7. SEMS, Inc.

Under RCRA, you are each potentially jointly and severally liable for injunctive relief and costs of litigation, including reasonable attorney and expert witness fees.

In addition, the following responsible parties are also each potentially liable for civil penalties (to be paid to the U.S. Treasury) of up to \$37,500 per day, per violation: 1) Orleans

Parish School Board, 2) Jacobs Engineering/CSRS Consortium, 3) CSRS, Inc., 4) Jacobs Engineering Group Inc., and 5) SEMS, Inc.

***The regulations and requirements violated and  
the activities alleged to be violations***

Upon information and belief, by disturbing, digging up, and managing contaminated soils at the Booker T. Washington High School site, you are generating solid waste that includes waste that exhibits the characteristic of toxicity and is therefore “hazardous waste” under LAC 33:V.4903.E. This is hazardous remediation waste. *See* LAC 33:V.109; 40 C.F.R. § 260.10.

Upon information and belief, you are each a generator of hazardous remediation waste yet you have failed to make a lawful determination as to whether your waste is hazardous, as required by LAC 33:V.1103 (which implements 40 C.F.R. § 262.11). Specifically, you have failed to lawfully analyze representative samples of materials that will be generated as waste and managed during the demolition, remediation and construction process. By way of example and not limitation, an appropriate analysis would include full characterization of sources of remediation waste using TCLP. Upon information and belief, your failure to conduct these necessary analyses resulted in your violation of numerous other RCRA requirements. Your violations include, without limitation, the following provisions of RCRA and its implementing regulations:

- LAC 33:V.1103 (which implements 40 C.F.R. § 262.11): violation of the generator’s duty to conduct a lawful determination of whether generated waste is hazardous;
- 42 U.S.C. § 6925(a): violation of RCRA’s fundamental prohibition of storage and disposal of hazardous waste without a permit;
- LAC 33:V.555, 570, and 575 (which implement 40 C.F.R. § 40 C.F.R. §§ 270.85, 270.100, and 270.105): failure to obtain a Remedial Action Plan (RAP) permit, failure to apply for a RAP, failure to sign a RAP application, and failure to make the required certification;
- LAC 33:V.1501.H.2 (which implements 40 C.F.R. § 264.1(j)(2)): violation of the duty held by the owner and operator to obtain an appropriate detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site;
- LAC 33:V.1105 (which implements 40 C.F.R. § 262.12(a)): violation of the generator’s duty to obtain an EPA identification number;
- LAC 33:V.1501.H.1 (which implements 40 C.F.R. § 264.1(j)(1)): violation of the duty held by the owner and operator to obtain an EPA identification number;
- LAC 33:V.1105.E (which implements 40 C.F.R. § 262.34): violation of the generator’s duty to comply with accumulation limits;
- LAC 33:V.1501.H.10 (which implements 40 C.F.R. § 264.1(j)(10)): violation of the duty held by the owner and operator to develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents;

- LAC 33:V.1501.H.13 (which implements 40 C.F.R. § 264.1(j)(13)): violation of the duty held by the owner and operator to maintain records documenting compliance with paragraphs H.1-12 of LAC 33:V.1501.
- Upon information and belief, the discovery process will reveal additional violations of LAC 33:V.1501 and other RCRA provisions and regulations.

Furthermore, upon information and belief, your management of remediation solid and hazardous waste on the Booker T. Washington School property may present an imminent and substantial endangerment to human health and the environment.

### *Dates of the Violations*

Upon information and belief, the violations began on or about July 6, 2015, when you commenced foundation and soil removal activities on the Booker T. Washington School property. They have continued, on a daily basis, since.

### *Additional Information*

#### **I. The Clio Street/Silver City Dump**

The City of New Orleans operated the Clio Street Dump, later referred to as the Silver City Dump, during an approximate period spanning from the late 1890s<sup>2</sup> to the late 1930s.<sup>3</sup> Archived municipal records describe the location of the Clio Street/Silver City Dump as bounded on the north and south by Calliope Street (now Earhart Boulevard) and Erato Street and bounded on the east and west by South Derbigny Street and South Broad Street.<sup>4</sup> Governmental officials managing waste disposal ranked the Clio Street/Silver City dump as the second largest dump in New Orleans, where more than 150 tons of waste – nearly half of the waste collected daily in the city – were disposed.<sup>5</sup> According to a municipal government report, the waste disposed at the Clio Street/Silver City Dump included “ash and a great deal of trade waste.”<sup>6</sup> This report also

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<sup>2</sup> See *City Health Board's Monthly Meeting*, TIMES-PICAYUNE, published as THE DAILY PICAYUNE, April 4, 1899, page 6 (reporting that the City Health Board investigated the waste disposed at the Clio Street Dump to determine the source of small pox infections).

<sup>3</sup> See *Site of 'Silver City' as It Will Appear When Calliope Street Project Is Completed*, THE TIMES-PICAYUNE/NEW ORLEANS STATES, Feb. 18, 1940, sec. 5, p. 7 (reporting that the Silver City waste dump is closed and will be the site of racially segregated housing in a “low-rental project for Negroes” and a “Negro high school and community center”).

<sup>4</sup> Carl Schneider, Aide to the City of New Orleans Commissioner of Public Property, *Report on Garbage Collection and Disposal* [n. d.] p. 2. Garbage Incinerator/Garbage Collection, 1925, 1927-1928. Records of the Department of Public Property, 1912 (1925-1929) 1947. The City Archives, New Orleans Public Library.

<sup>5</sup> See, e.g., *Abandon Cutoff for Incinerator, M'Shane Urges: Notice to Vacate Dump Suggests Switch of 1924 Budget*, THE TIMES-PICAYUNE, Feb. 9, 1924, p. 1 (quoting Wilbert Black, Commissioner of Public Property: “If we are compelled to leave the Clio street dump, the city will be in a serious situation. We are dumping more than 150 tons of garbage a day there and this is nearly half of the 385 tons of garbage and refuse collected in New Orleans daily”).

<sup>6</sup> See *supra* n. 4.

describes the volume of waste at the Clio Street/Silver City Dump as follows: “the accumulations of many years of dumping have created mounds as high as 20 feet above surrounding grades.”<sup>7</sup> The Clio Street/Silver City Dump was the focus of a federal public health campaign, supervised by the U.S. Public Health Service, to eradicate the bubonic plague and other infectious diseases in New Orleans which lasted for several years.<sup>8</sup> At the direction of the US Public Health Service, waste on the Clio Street/Silver City Dump was openly burned on a daily basis by igniting petroleum oil that was intentionally poured on top of the waste.<sup>9</sup>

Contemporaneous news reports depict the Clio Street/Silver City Dump as an “ulcer”<sup>10</sup> in the heart of New Orleans that “increased the death rate of New Orleans”<sup>11</sup> with the spread of diseases.<sup>12</sup> Use of the Clio Street/Silver City Dump by both the City of New Orleans and private garbage collection services required on at least one occasion, the allocation of emergency funds to repair a street that was damaged by heavy traffic to the dump.<sup>13</sup> One news report describes a mule used to haul a garbage cart to the Clio Street/Silver City Dump being burned to death as a result of the spontaneous combustion of waste materials.<sup>14</sup> According to news reports, governmental officials worked for nearly two decades to close the Clio Street/Silver City Dump because of the dangers and nuisance it created.<sup>15</sup> The Commissioner of Public Property described the Clio Street/Silver City Dump as “a real menace to the health and welfare of that vicinity,”<sup>16</sup> due to the “great number of dwellings near the Clio dump.”<sup>17</sup> For this reason, the Commissioner recommended closing the Clio Street/Silver City Dump and converting the site to “manufacturing or commercial enterprise.”<sup>18</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Letters from M.S. Lombard, Surgeon in Charge, United States Public Health Service, to Mayor Martin Behrman, City of New Orleans, Mar. 24, 1920 and Jan. 12, 1921. United States Public Health Service, 1921. Records of the Department of Public Property 1912 (1925-1929) 1947. The City Archives, New Orleans Public Library.

*See also Garbage Dumps in City Are Scored by Speaker*, THE TIMES-PICAYUNE, Mar. 17, 1920, p. 20 (reporting on speech by entomologist who identified the Clio street dump as source of disease-carrying flies that are “increasing the death rate of New Orleans”).

<sup>9</sup> *See, e.g.*, Division of Public Works monthly reports of Oct. 8, 1914, Nov. 7, 1914, Dec. 4, 1914, Jan. 5, 1915 (documenting the use of petroleum oil to daily burn waste on city dumps under the direction and supervision of the United States Public Health Service). Monthly Reports. Records of the Division of Public Works, 1912 – 1929. KDW204, 1912 – 1921 & 1926. The City Archives, New Orleans Public Library

<sup>10</sup> *What the Clio Street Dump Pile Is*, THE TIMES-PICAYUNE, Mar. 29, 1920, p. 1.

<sup>11</sup> *Garbage Dumps in City Are Scored by Speaker*, THE TIMES-PICAYUNE, Mar. 17, 1920, p. 20.

<sup>12</sup> *Id.*

<sup>13</sup> *Emergency Committee to Put Clio Street in Repair*, THE TIMES-PICAYUNE, Dec. 31, 1904.

<sup>14</sup> *Mayor and Council Talk Compromise*, THE TIMES-PICAYUNE, Mar. 11, 1902, p. 15.

<sup>15</sup> *Abandon Cutoff for Incinerator, M’Shane Urges: Notice to Vacate Dump Suggests Switch to 1924 Budget*, THE TIMES-PICAYUNE, Feb. 9, 1924, pp. 1 and 4; *supra* notes 10 and 11.

<sup>16</sup> *See supra* n. 4, p. 6

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

By the late 1930s the Clio Street/Silver City Dump was closed for the purpose of constructing racially segregated housing units, a community center, and the Booker T. Washington High School, which were built on the dump site beginning in 1940.<sup>19</sup> This residential development was specifically built for African Americans to live and attend school on the former waste dump.<sup>20</sup> No environmental remediation or cleanup of the dump site was conducted prior to the construction of the homes, community center, and the Booker T. Washington High School.<sup>21</sup> The Walter L. Cohen Alumni Association and Sierra Club are concerned that you are extending this legacy of racial injustice by constructing a new school on the contaminated property of the Booker T. Washington School for predominately African American students who are to be relocated from the current Walter L. Cohen School building which has no record of environmental contamination and is located on valuable real estate.

## **II. Your Failure to Appropriately Assess the Site of the Booker T. Washington School and Conduct a Hazardous Waste Determination Violates RCRA**

According to Orleans Parish Assessor's Office records, the OPSB is the owner of the Booker T. Washington School property. This property, located on a portion of the Clio Street/Silver City Dump, is adjacent to a residential neighborhood, where hundreds of families live. On this property, the RSD proposes to construct a new school for some 500 Cohen College Prep students who are to be relocated from the Walter L. Cohen School building located at 3520 Dryades Street in New Orleans, Louisiana, 70115. The RSD has not publicly disclosed the rationale for its decision to close the Walter L. Cohen School building. Both the RSD and the OPSB have reported that the Walter L. Cohen School building is in "fair condition," which would not warrant building replacement.<sup>22</sup> Unlike the Booker T. Washington School, the Walter L. Cohen School building is not located on contaminated property, but instead occupies real estate in the 70115 zip code and has a potentially high resale value.<sup>23</sup>

Four environmental assessments of the soil and groundwater on the Booker T. Washington School property have been prepared for the RSD.<sup>24</sup> These assessments either omit

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<sup>19</sup> See *supra* n. 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Recovery School District & Orleans Parish School Board, School Facilities Master Plan for Orleans Parish, August 2008 (pp. 31-32 explain that a Facility Condition Index (FCI) of 25-49% means a school building is in "fair condition"; page 63 reports that the FCI for the Cohen School is 49%).

<sup>23</sup> See Jaquetta White, *Home Prices Rise for Third Year in a Row in the New Orleans Area*, THE NEW ORLEANS ADVOCATE, February 27, 2014, available at: <http://www.theneworleansadvocate.com/news/11697527-123/home-prices-rise-again-in> (reporting that the average real estate value of property in the 70115 zip code has increased from \$173 per square foot in 2005 to \$223 per square foot in 2015).

<sup>24</sup> See Three Fold Consultants, letter report of soil contamination at the Booker T. Washington High School property, January 9, 2012; Leaaf Environmental, LLC, *Limited Phase II Environmental Site Assessment Report: Booker T. Washington Property*, July 2012; CB&I, *Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report: Booker T. Washington High School*, August 2013; and CB&I, *Addendum to the August 2013 Site Investigation and Risk Evaluation/Corrective Action*

the prior use of the Booker T. Washington High School property as the Clio Street/Silver City Dump<sup>25</sup> or fail to conduct any research of the history of waste disposal on this city waste dump.<sup>26</sup> According to these assessments, there are unacceptable concentrations of toxic heavy metals<sup>27</sup> and polycyclic aromatic hydrocarbons<sup>28</sup> contaminating the soil from the surface layers down to a below ground depth of 15 feet (the farthest depth tested). These assessments confirm that the soil contamination exceeds the Louisiana risk-based standard for residential use.

The environmental assessments reveal that there has been no determination of whether the waste on the school site is hazardous, as RCRA requires. *See* LAC 33:V.1103 (which implements 40 C.F.R. § 262.11). Instead, you have limited the assessments to the detection of heavy metals and polycyclic aromatic hydrocarbons. As a result, the full extent of contamination on this property is unknown. Although a consultant to the RSD recommended that you perform TCLP analysis as part of the site investigation to determine whether the waste is hazardous based on the characteristic of toxicity, this recommendation was not followed by the RSD and the consultant was replaced.<sup>29</sup>

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*Program (RECAP) Report: Booker T. Washington High School, August 2014.*

<sup>25</sup> Waldemar S. Nelson & Company, *Phase I Environmental Assessment Report: Booker T. Washington High School*, November 2009, p. 3.

<sup>26</sup> Examples of woefully insufficient site history information are found in the environmental assessments prepared for the RSD, October 2012 *Site Investigation Work Plan* by Leaaf Environmental and the August 2013 *Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report* by CB&I, which only summarily conclude without any further discussion that there is “. . . general knowledge that this neighborhood was the location of a city dump prior to the construction of the school,”(Leaaf Environmental, *Site Investigation Work Plan for the Booker T. Washington School*, October 4, 2012, p. 4) and “. . . the property was reportedly a ‘city dump’ prior to the construction of the Booker T. Washington High School in the 1940s.” (CB&I, *Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report: Booker T. Washington High School*, August 2013, page 1-1). There is no evidence of due diligence in these environmental assessments to indicate any research of historical land use.

<sup>27</sup> Three Fold Consultants, letter report of soil contamination at the Booker T. Washington High School property, January 9, 2012, pp. 1 – 2 and Figure 1 (summarizing analysis of toxic heavy metals detected in 10 soil samples collected from the Booker T. Washington School property and recommending that the contaminated soil be excavated to a level that does not exceed the risk-based standard and then be backfilled with clean soil); Leaaf Environmental, *Limited Phase II Environmental Site Assessment Report: Booker T. Washington Property*, July 2012, p. 1 and Table 3; and CB&I, *Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report: Booker T. Washington High School*, August 2013, p. 4-1, Table 3, and Appendix E.

<sup>28</sup> CB&I, *Addendum to the August 2013 Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report: Booker T. Washington High School*, August 2014, p. 8-1, Tables 3A and 3B.

<sup>29</sup> *See* Leaaf Environmental, *Site Investigation Work Plan for the Booker T. Washington School*, October 4, 2012, p. 10 (recommending TCLP analysis in the “Analytical Methods and Sample Handling Requirements”). This site investigation work plan was replaced by the CB&I, *Site Investigation and Risk Evaluation/Corrective Action Program (RECAP) Report: Booker T. Washington High School*, August 2013, which omits any reference to a TCLP analysis or other hazardous waste determination method.

On or about July 6, 2015, you commenced demolition activities on the Booker T. Washington School property. According to the RSD plans, these demolition activities are in concert with the excavation, temporary storage or stockpiling, transport, and off-site disposal of three feet of the contaminated soil.<sup>30</sup> These activities generate waste. See LAC 33:V.109 (a “generator” is any person ... whose act first causes a hazardous waste to become subject to regulation”); *see also* 80 Fed. Reg. 34156 (June 15, 2015) (noting RCRA’s coverage of “hazardous wastes managed during cleanup”).

Because you are owners, operators, and generators of waste on the Booker T. Washington School property, RCRA requires you to comply with state and federal laws and regulations. By failing to determine if your waste is hazardous under LAC 33:V.1103 (which implements 40 C.F.R. § 262.11) you have all but guaranteed that your activities at the site will violate a myriad of RCRA regulations.

Both the owner and operators are liable for RCRA violations. Here, OPSB is liable as the owner. The other responsible parties (John White, in his official capacity as Superintendent of the Louisiana Department of Education, Patrick Dobard, in his official capacity as Superintendent of the Recovery School District, the Jacobs Engineering/CSRS Consortium, CSRS, Inc., Jacobs Engineering Group Inc., and SEMS, Inc.) are liable as operators. Each of you are liable as generators of hazardous remediation waste for failure to follow requirements applicable to generators, and you are also liable as the owner or operators of a facility that stores and disposes of hazardous remediation waste without a permit and in violation of statutory prohibitions and regulations.

### **III. Your Activities on the Booker T. Washington School Property May Present an Imminent and Substantial Endangerment to Health and the Environment**

Your contributions to the past and present handling, storage, and disposal of solid and hazardous waste on the Booker T. Washington School property may present an imminent and substantial endangerment to health and the environment. Archived municipal government records and reports in the newspaper of record indicate the potential for dangerous waste, such as dioxins, to be present on the Clio Street/Silver City Dump as a result of open burning and the accumulation of tons of ash disposal. The property soil remains contaminated and is located next to hundreds of apartments and houses, where families live. Demolition and soil removal activities can release harmful soil contaminants into the air in the form of dust that can be inhaled and ingested. The residents living near this contaminated school property include infants, children, the elderly, pregnant and nursing women, and people with chronic illnesses such as asthma, who are all particularly vulnerable to the adverse health effects of toxic exposures.

From the ground surface down to 15 feet below ground, the following toxic heavy metals and polycyclic aromatic hydrocarbons were detected at concentrations that exceed the Louisiana risk-based standard for residential use: antimony, barium, cadmium, copper, lead, mercury, zinc, benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, and indeno(1,2,3-cd)pyrene. There are no scientifically known safe levels of exposure to these contaminants. The health effects of

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<sup>30</sup> CB&I, *Corrective Action Workplan (Resubmittal): Booker T. Washington High School*, prepared for the RSD, February 19, 2014.



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these contaminants include cancer of the liver, lungs, stomach, skin, blood, spleen, and pancreas; damage to a developing fetus; damage to the central nervous system and brain; respiratory damage; damage to male and female reproductive systems; damage to the liver and kidneys; coughing and wheezing; and irritation of the skin, eyes, nose, and throat.

Your own data reveal contamination at the site that includes the following:

<b>Toxic Heavy Metals</b>	<b>Polycyclic Aromatic Hydrocarbons</b>
Lead 24.2 times higher than the residential use standard	Benzo(a)pyrene 16.7 times higher than the residential use standard
Antimony 20.9 times higher than the residential use standard	Benzo(a)anthracene 11 times higher than the residential use standard
Copper 7.9 times higher than the residential use standard	Benzo(b)fluoranthene 10.6 times higher than the residential use standard
Cadmium 3.7 times higher than the residential use standard	Indeno(1,2,3-cd)pyrene 4.8 times higher than the residential use standard
Arsenic 3 times higher than the residential use standard	
Mercury 3.9 times higher than the residential use standard	
Barium 2.4 times higher than the residential use standard	
Zinc 2.1 times higher than the residential use standard	

Your actions fail to ensure adequate safeguards and threaten human health and the environment as a result of the following deficiencies:

- no full waste characterization of all toxic substances and their leachates to determine the presence of a hazardous waste or hazardous waste constituent;
- no human health and air quality assessments of the dispersion of all toxic substances present on site in the form of dust particles that can be released during the excavation and movement of contaminated soil;
- no human health and water quality assessments of the discharge of all toxic substances present on site in storm water runoff that can occur during the excavation and movement of contaminated soil;
- no assessment of human health impacts of exposures to all toxic substances present on site via inhalation, skin contact, or ingestion for site workers, nearby residents, or students and staff who would occupy the school;

- no assessment of human health impacts on persons vulnerable to toxic exposures, in particular infants, children, pregnant and nursing women, the elderly, and people with chronic illness;
- no comprehensive surface water quality assessment of all toxic substances present on site where groundwater flows into the already impaired Bayou St. John, and
- no comprehensive assessment of the potential effect of allowing toxic substances, the full extent of which is unknown, to remain on the site where a new school is planned.

Furthermore, your plan to arbitrarily remove only three feet of the contaminated soil<sup>31</sup> would leave at least 12 feet of contaminated soil on the property where you propose to build a new school.<sup>32</sup> As shown in the table above, the soil that would remain on the property is contaminated with toxic heavy metals and polycyclic aromatic hydrocarbons at concentrations in excess of the Louisiana risk-based standard for residential use.<sup>33</sup> This would maintain and expand the threat of exposure to school students.

Your construction activities will release soil contaminants into the air and water. These activities can have devastating health effects on residents in the surrounding community, in particular, infants, children, pregnant and nursing women, elderly people, and people with chronic illness. Workers employed in these activities are also at great risk of toxic exposure.

In sum, your plan to build a school on top of highly contaminated soil creates unacceptable health risks for students – the very people who the RSD and OPSB are entrusted to protect. The barrier of six feet of clean soil with a concrete cover that the RSD proposes for the school construction is not a permanent solution and is subject to failure, especially given the effects of natural subsidence and the frequency of flooding in this area. Moreover, the proposed barrier presupposes a knowledge of the environmental conditions of the school property, including the full range of toxic substances and waste in the soil and groundwater, of which the RSD and the OPSB are demonstrably ignorant.

To avoid the endangerment at issue, the Walter L. Cohen Alumni Association and Sierra Club urge you to immediately announce suspension of further activities on the Booker T. Washington School property in order to:

- (1) consider a “no build” option as an alternative to the currently planned project for the construction of a school on the former Clio Street/Silver City Dump, where known soil contaminants exceed the risk-based standard for residential land use;
- (2) ensure full compliance with RCRA;
- (3) undertake a hazardous waste determination of soil and groundwater on the Booker T. Washington School property and allow for split sampling with the Walter L. Cohen Alumni Association and Sierra Club;

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<sup>31</sup> *Id.*

<sup>32</sup> *See supra* note 27.

<sup>33</sup> *Id.*

- (4) rigorously analyze the alternatives available for safe and effective environmental remediation of the former waste dump, including all risks and benefits reasonably presented by these alternatives;
- (5) present these alternatives and the plan for protecting residents living adjacent to and in the vicinity of the Booker T. Washington School property from the threat of toxic exposure to contaminants on this property;
- (6) convene an open and transparent public participation process in the decision-making regarding plans for handling the contamination and any proposed development on the Booker T. Washington School property; and
- (7) select the best alternative and plan of action that protects human health and the environment.

***Persons Giving Notice***

The full names and addresses of the persons giving notice are as follows:

Walter L. Cohen Alumni Association  
Attn: Mr. Jim Raby, President  
P. O. Box 750941  
New Orleans, Louisiana 70112

Sierra Club  
Attn: Mr. Haywood (Woody) Martin  
Chair, Delta Chapter  
Attn: Mr. Darryl Malek-Wiley  
Senior Organizing Representative  
716 Adams Street  
New Orleans, LA 70118

These parties, however, should be contacted through their counsel:

Monique Harden  
Advocates for Environmental Human Rights  
832 Topaz Street  
New Orleans, LA 70124  
(504) 799-3060

Adam Babich  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA  
(504) 862-8800

If you believe that any portion of this Notice is in error or if you wish to discuss any portion of this Notice, please contact Monique Harden or Adam Babich at the above-listed addresses and phone numbers.

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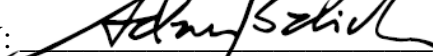
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