

22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of AHERA and the federal regulations implementing AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations alleged herein.

II. General Provisions

1. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the Environmental Protection Agency's ("EPA") jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.
7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best

of its knowledge, the Facilities are in compliance with the provisions of the Asbestos Hazard Emergency Response Act ("AHERA"), Subchapter II of TSCA, 42 U.S.C. §§ 2641-2656, and regulations promulgated thereunder.

8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees.
10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
11. By signing and executing this CA, Respondent certifies that it has already spent at least twenty thousand two hundred twenty-six dollars (\$20,226) since the Maryland Department of the Environment's ("MDE") August 6th & 7th, 2008 inspections for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with § 207(a) of TSCA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all supporting cost documentation and information.
12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent.

III. EPA's Findings of Fact and Conclusions of Law

13. Complainant has determined that Respondent has violated requirements of TSCA and the federal regulations implementing AHERA set forth at 40 C.F.R. Part 763, Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and

conclusions of law.

14. Respondent, Kent County Board of Education Inc., is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

15. The Facilities, Rock Hall Elementary School, located at 5608 Boundary Avenue in Rock Hall, MD; Chestertown Middle School, located at 402 Campus Avenue in Chestertown, MD; and Kent County High School, located at 25301 Lambs Meadow Road in Worton, MD, are each a "school" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. 2642(12) and 40 C.F.R. § 763.83.

16. The Facilities are each a "school building" as that term is defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT I

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

18. 40 C.F.R. § 763.85(a)(2) provides, with exceptions not relevant to these proceedings, that any building leased or acquired by local education agencies on or after October 12, 1988 to be used as a school building shall be inspected to identify all locations of friable and non-friable asbestos-containing building material ("ACBM").
19. In addition, 40 C.F.R. § 763.85(b)(1) requires that, at least once every 3 years after a management plan is in effect, the local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.
20. During the August 6th & 7th, 2008 inspections, the MDE inspector observed that Respondent did not conduct complete inspections identifying all locations of friable and non-friable ACBM within Chestertown Middle School and Kent County High School.
21. Respondent's failure to conduct complete inspections for ACBM at the Facilities is a violation of 40 C.F.R. § 763.85(a)(2) & (b)(1), and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1) & (b)(1).

COUNT II

22. The allegations contained in Paragraph 1 through 21 are incorporated herein by reference.
23. 40 C.F.R. § 763.93(g)(1)-(3) requires a local education agency to maintain complete and updated copies of management plans in LEA and school administrative offices, and make them available for inspection.

24. During the August 6th & 7th, 2008 inspections, the MDE inspector observed that Respondent failed to have available for inspection complete and updated copies of asbestos management plans at the LEA and school administrative offices for the Facilities, as required pursuant to 40 C.F.R. § 763.93(g)(1)-(3).
25. By failing to maintain complete and updated copies of management plans in LEA and school administrative offices, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(1)-(3) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(g)(1)-(3).

COUNT III

26. The allegations contained in Paragraph 1 through 25 are incorporated herein by reference.
27. Pursuant to 40 C.F.R. § 763.93(e)(1), each local education agency shall develop an asbestos management plan and ensure that it includes all items required under the regulations.
28. During the August 6th & 7th, 2008 inspections, the MDE inspector observed that Respondent failed to include all items required to be in the management plans for the Facilities, including diagrams of ACBM locations, response actions, and updated ACBM levels within the Facilities, as required pursuant to 40 C.F.R. § 763.93(e)(1).
29. By failing to include all items required to be in the of management plans for the Facilities, Respondent violated the requirements of 40 C.F.R. § 763.93(e)(1) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(e)(1).

IV. Settlement Recitation

30. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that the Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for violations of TSCA. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of nineteen thousand five hundred dollars (\$19,500) is appropriate.
31. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c), i.e., the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act ("ERP"), dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.
32. Respondent certifies that it has spent at least twenty thousand two hundred twenty-six dollars (\$20,226) since MDE's August 6th & 7th, 2008 inspections to comply with Subchapter II of TSCA. Therefore, pursuant to sections 16(a)(2)(C) and 207(a) of TSCA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of nineteen

thousand five hundred dollars (\$19,500) of the civil penalty assessed against Respondent.

33. Respondent consents to the assessment of a nineteen thousand five hundred dollar penalty (\$19,500) with a cash component of zero (\$0) dollars.

V. Reservation of Rights

34. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under Subchapter II of TSCA, 15 U.S.C. §§ 2641 to 2656, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. Effective Date

35. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

For Respondent:

May 2, 2011
Date

A Barbara Wheeler
Dr. A. Barbara Wheeler, Superintendent
Kent County Board of Education Inc.

For Complainant:

May 09, 2011
Date

Kyla L. Townsend-McIntyre
Kyla L. Townsend-McIntyre
Enforcement Officer

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

5/24/2011
Date

Harry J Dow for AF
Abraham Perdas, Director
Land and Chemicals Division



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

IN RE:

Kent County Board of Education Inc.
215 Washington Avenue
Chestertown, MD 21620

Docket No: TSCA-03-2011-0156

FINAL ORDER

Respondent

FINAL ORDER

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent is assessed a civil penalty of nineteen thousand five hundred dollars (\$19,500) but that the cash component of that civil penalty will be zero (\$0) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), nineteen thousand five hundred dollars (\$19,500) of the civil penalty assessed against the Respondent is hereby remitted. The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

6/8/11
Date



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

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

IN RE: :
: :
Kent County Board of Education Inc. : Docket No: TSCA-03-2011-0156
215 Washington Avenue :
Chestertown, MD 21620 : CONSENT AGREEMENT
: :
Respondent :
:

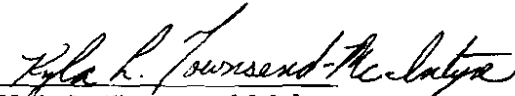
CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):

Dr. A. Barbara Wheeler, Superintendent
Kent County Board of Education Inc.
215 Washington Avenue
Chestertown, MD 21620

Patrick W. Thomas, Esquire
Funk & Bolton, P.A.
210 South Cross Street, Suite 101
Chestertown, Maryland 21620

06/08/2011
Date


Kyla L. Townsend-McIntyre
Enforcement Officer
U.S. Environmental Protection Agency, Region III