

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

2014 JAN 10 PM 4:08

In the matter of:

West Park Elementary
School District

Respondent.

) Docket No. TSCA-09-2014-0004
) CONSENT AGREEMENT
) and
) FINAL ORDER PURSUANT TO
) SECTIONS 22.13 AND 22.18
)
)
)

US EPA - REGION IX
HEARING CLERK

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent West Park Elementary School District (hereafter "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 207 of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (hereinafter referred to as "TSCA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. This proceeding involves the Asbestos Hazard Emergency Response Act ("AHERA"), also known as Title II of TSCA, and the regulations promulgated thereunder. Section 203(b) of TSCA, 15 U.S.C. § 2643(b), required the Administrator of EPA to, among other things, promulgate regulations prescribing procedures for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency ("LEA"). Section 203(g) of TSCA, 15 U.S.C. § 2643(g), required the Administrator of EPA to promulgate regulations to, among other things, require periodic reinspection of friable and non-

friable asbestos. Section 203(i) of TSCA, 15 U.S.C. § 2643(i), required the Administrator of EPA to, among other things, promulgate regulations requiring each LEA to develop and implement an asbestos management plan (“AMP”) for school buildings under its authority. These regulations are codified at 40 C.F.R. Part 763, Subpart E (the “Subpart E regulations”).

3. Section 763.85(a)(2) of the Subpart E regulations states that any building leased or acquired on or after October 12, 1988 that is to be used as a school building shall be inspected as described under paragraphs (a)(3) and (4) of Section 763.85 prior to use as a school building and that, in the event that emergency use of an uninspected building as a school building is necessary, such buildings shall be inspected within 30 days after commencement of such use. Section 763.85(b) of the Subpart E regulations states that at least once every 3 years after a management plan is in effect, each LEA shall conduct a reinspection of all friable and nonfriable known or assumed asbestos-containing building material, in each school building that they lease, own, or otherwise use as a school building. Section 763.93(g)(2) of the Subpart E regulations provides that each LEA shall maintain in its administrative office a complete, updated copy of an AMP for each school under its administrative control or direction. Section 763.93(g)(3) of the Subpart E regulations provides that each school shall maintain in its administrative office a complete, updated copy of the AMP for that school. 40 C.F.R. § 763.93(g)(3).

4. Sections 207(a)(1) and (3) of TSCA, 15 U.S.C. §§ 2647(a) (1) and (3), provide that any LEA that fails to conduct an inspection or fails to develop an AMP pursuant to regulations under Section 203(i) of TSCA, 15 U.S.C. § 2643(i), is liable for a civil penalty. Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a civil penalty, for each day that a violation continues, of (1) not more than \$5,000 for violations on or before January 30, 1997;

(2) not more than \$5,500 for violations after January 30, 1997 but on or before March 15, 2004; (3) not more than \$6,500 for violations after March 15, 2004 through January 12, 2009; and (4) not more than \$7,500 for violations after January 12, 2009.

5. Section 207(a) of TSCA, 15 U.S.C. § 2647(a), further provides that any civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation(s), and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. Section 207(a) states that any civil penalty collected shall be used by the LEA to comply with TSCA Title II, with any portion remaining unspent to be deposited into the Asbestos Trust Fund established pursuant to Section 5 of the Asbestos Hazard Emergency Response Act of 1986, codified at 20 U.S.C. § 4022. In addition, Section 207(c) of TSCA, 15 U.S.C. § 2647(c), requires EPA to consider the significance of the violation, the culpability of the violator, including any history of previous TSCA violations, the ability of the violator to pay the penalty, and the ability of the violator to continue to provide educational services to the community.

B. AUTHORITY AND PARTIES

6. Respondent operates West Park Elementary School and West Park Charter Academy in Fresno, California. West Park Elementary School is a public school. West Park Charter Academy is a public, state-funded school constituted within the state of California pursuant to the California Charter Schools Act of 1992. See California Education Code Sections 47605-47608.

7. The authority to take action under Section 207 of TSCA, 15 U.S.C. § 2647, is vested

in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 12-2-A, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under TSCA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order R9-12-2-A, dated February 11, 2013, the Regional Administrator of EPA Region IX redelegate this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

C. COMPLAINANT'S ALLEGATIONS

8. Respondent began operating West Park Elementary School at 2695 S. Valentine, Fresno, California before 1989. West Park Elementary School is a nonprofit public K-8 school. Respondent began operating West Park Charter Academy in approximately 1994. West Park Charter Academy is a nonprofit public K-12 school operating at 2695 S. Valentine, Fresno, California; 3645 W. Shaw Ave, Suite 102, Fresno, California; and 729 W Lacey Blvd, Suite 9, Hanford, California. Respondent owns, leases, or otherwise uses, at the minimum, one (1) "school building," as defined in Section 202(13) of TSCA Title II, 15 U.S.C. § 2642(13), and in 40 C.F.R. § 763.83. Respondent is a LEA, as defined in Section 202(7) of TSCA Title II, 15 U.S.C. § 2642(7), and in 40 C.F.R. § 763.83.

9. Sections 203(i) and 205(d) of TSCA, 15 U.S.C. §§ 2643(i) and 2645(d), require that Respondent, prior to using a building as a school after October 12, 1988, conduct an inspection and develop a valid AMP. Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), and 40 C.F.R. § 763.97(a), make it unlawful for Respondent to fail to conduct such inspections and develop such an AMP, and provide that each separate failure to comply with respect to a single school building constitutes a violation of Section 207(a)(3) of TSCA. If a signed statement of an architect or

project engineer has been submitted to EPA pursuant to Section 763.99(a)(7), then the LEA is not required to perform an inspection.

10. In September, 2012, the EPA Region IX Toxics Office conducted an inspection of the school campus at 2695 S. Valentine, Fresno, California, and no AMP was available. A survey dated February 28, 2008 was available. In a letter dated November 5, 2012, EPA requested that Respondent provide its AMP to EPA. Respondent stated that it could not provide an AMP to EPA and a consultant had been hired to conduct an AHERA inspection and prepare an AMP. Respondent provided EPA: (1) an AMP dated February 15, 2013 for the school buildings at 2695 S. Valentine, Fresno, California, documenting 44,633 square feet of known or assumed asbestos-containing building material (“ACBM”); (2) An AMP dated September 19, 2013 for the school building at 3645 W. Shaw Ave, Suite 102, Fresno, California documenting an April 3, 2013 architect’s letter and that the building contains no known or assumed ACBM; and (3) An AMP dated February 15, 2013 for the school building at 729 W Lacey Blvd, Suite 9, Hanford, California documenting 7,300 square feet of assumed ACBM. Prior to September, 2012, Respondent had not prepared an AMP for the school buildings at 2695 S. Valentine, Fresno, California, nor conducted an initial inspection or prepared an AMP for the school buildings at 729 W Lacey Blvd, Suite 9, Hanford, California and 3645 W. Shaw Ave, Suite 102, Fresno, California.

11. Respondent violated Section 207(a)(1) of TSCA Title II, 15 U.S.C. § 2647(a)(1), by failing to conduct an inspection pursuant to Section 203(b), 203(e)(3) and 203(g)(2) of TSCA Title II, 15 U.S.C. §§ 2643(b), 2643(e)(3) and 2643(g)(2) and the Subpart E regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school buildings at 729 W Lacey Blvd, Suite 9, Hanford, California and 3645 W. Shaw Ave, Suite 102, Fresno, California.

12. Respondent violated Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), by failing

to develop and keep current an AMP, pursuant to Section 203(i) of TSCA Title II, 15 U.S.C. § 2643(i), and the regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school buildings at 2695 S. Valentine, Fresno, California; 729 W Lacey Blvd, Suite 9, Hanford, California; and 3645 W. Shaw Ave, Suite 102, Fresno, California.

D. RESPONDENT'S ADMISSIONS

13. To avoid the disruption of orderly educational activities and the expense of protracted and costly litigation, Respondent, in accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO; (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.G of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO, including but not limited to its right under Section 16(a)(2)(A) of TSCA to request a hearing; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. COMPLIANCE WITH AHERA

14. AHERA and the AHERA Subpart E regulations specify the steps which must be taken to inspect each school building to determine whether that building contains asbestos-containing building material ("ACBM") or is assumed to contain asbestos-containing material ("ACM"), and what must be done to prepare and maintain a management plan. Compliance with AHERA and the AHERA subpart E regulations includes:

(A) Identification and training for Designated Persons identified by the Respondent, as required by 40 C.F.R. § 763.84(g)(1), and all maintenance and custodial staff who may work in a building that contains ACBM or assumed to contain ACM.

(B) Maintenance of a complete copy of the management plan for each school in Respondent's administrative office and in each school administrative office, as required by 40 C.F.R. § 763.93(g)(2) and (3). The management plan shall be available to representatives of EPA and the State, the public, including teachers, other school personnel, and their representatives, and parents without cost or restriction.

(C) Notifications: (1) Written notification to parent, teacher and employee organizations of the availability of the management plan and a description of the steps used to make such notification, as required by 40 C.F.R. § 763.93(g)(4), and subsequent notification to these organizations at least once each school year. (2) Notification to workers and building occupants, or their legal guardians about inspections, reinspections, response actions, and post-response activities, including periodic reinspection and surveillance activities that are planned or in progress.

(D) Implementation of the management plan. Whenever any friable ACBM is present or assumed to be present in a building that Respondent leases, owns or otherwise uses as a school building, implementation includes: development and implementation of an operations and maintenance program; any required initial cleaning as specified by 40 C.F.R. § 763.91(c)(1); clean-up and repair of items identified as suspected ACBM conducted in accordance with 40 C.F.R. § 763.90; and a commitment to perform a reinspection of all friable and nonfriable known or assumed ACBM in each school building that Respondent leases, owns or otherwise uses as a school building, at least once every three years.

(E) Maintenance of the following records: (1) records of accreditation for the person(s) who inspect, assess, and develop management plans; (2) record of each person required to be trained under 40 C.F.R. § 763.92(a)(1) and (2), with the person's name and job title, the date that training was completed, the location of the training, and the number of hours

completed in such training; (3) record of periodic surveillance performed, with the name of each person performing the surveillance, the date of the surveillance, and any changes in the conditions of the materials; (4) record of each person performing initial cleaning pursuant to 40 C.F.R. § 763.91(c), the date of such cleaning, the locations cleaned, and the methods used to perform such cleaning; and (5) for each time that operations and maintenance activities are performed, a record of each person performing the activity, the start and completion dates of the activity, the location(s) where such activity occurs, a description of the activity, including preventative measures used, and if ACBM is removed, the name and location of storage or disposal site of the ACBM.

F. RESPONDENT'S CERTIFICATION

15. In executing this CAFO, Respondent certifies that it has complied with AHERA and the AHERA Subpart E regulations at West Park Elementary School, West Park Charter Academy (including Fresno Learning Center and Hanford Learning Center), and all other facilities under its control which are subject to AHERA requirements. The AMPs for the above-listed schools document that the school buildings: contain 44,633 square feet of known or assumed asbestos-containing building materials at 2695 S. Valentine, Fresno California; contain no known or assumed asbestos-containing building materials at 3645 W. Shaw Ave, Suite 102, Fresno, California; and contain 7,300 square feet of assumed asbestos-containing building materials at 729 W Lacey Blvd, Suite 9, Hanford, California. Respondent certifies that all accounting of the costs incurred by Respondent in complying with AHERA and the AHERA Subpart E regulations provided to EPA are true and accurate.

G. CIVIL ADMINISTRATIVE PENALTY

16. Respondent consents to the assessment of a penalty in the amount of THIRTEEN THOUSAND FIVE HUNDRED SIX DOLLARS (\$13,506), as specified in this Paragraph as

final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO. This penalty has been reduced from \$20,060 to reflect the EPA approved costs of **Respondent's compliance with AHERA and the AHERA Subpart E regulations.**

17. Respondent shall pay the civil penalty amount required by Paragraph 16 within thirty (30) calendar days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," that shall state on the reverse side, "For Deposit Into the Asbestos Trust Fund, 20 U.S.C. § 4022", (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Attention: Asbestos Trust Fund
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:
Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency, Attn: Asbestos Trust Fund"

Overnight Mail:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
Attention: Asbestos Trust Fund

St. Louis, MO 63101

ACH (also known as REX or remittance express):
Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter “sfo1.1” in the search field
Open form and complete required fields
Comments regarding this payment: Attention: Asbestos Trust Fund

If clarification regarding a particular method of payment remittance is needed,
contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other
methods listed above, including proof of the date payment was made, shall be sent with a
transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

b) Ron Tsuchiya
Toxics Office
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

18. In the event that Respondent fails to pay the civil administrative penalty assessed
above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in
the amount of ONE HUNDRED DOLLARS (\$100) for each day that payment is late. Upon

Complainant's written demand, payment shall immediately become due and payable.

19. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

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

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

20. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act, rules promulgated thereunder, and other Federal, state or local laws or statutes.

21. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

22. Except as set forth in Paragraph 19 above, each party shall bear its own costs, fees, and disbursements in this action.

23. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

24. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

26. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

WEST PARK ELEMENTARY SCHOOL DISTRICT:

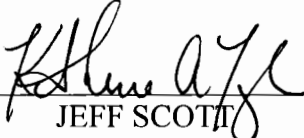
Date: 11.18.13 By: R-G. Vigil

Name: R-G. Vigil

Title: Superintendent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 1/7/2014 By:



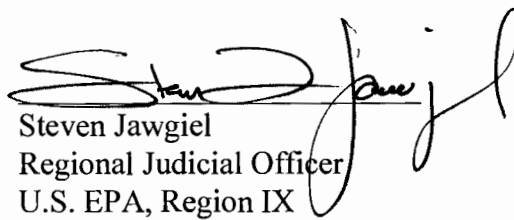
JEFF SCOTT
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall comply with the terms set forth in the Consent Agreement and pay the full civil penalty amount of THIRTEEN THOUSAND FIVE HUNDRED SIX DOLLARS (\$13,506), in accordance with the terms set forth in the Consent Agreement.

Date:

01/10/14

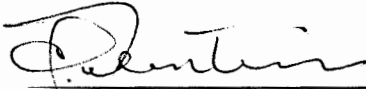

Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original ~~and one copy~~ of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R §§ 22.13 and 22.18 (Docket No. TSCA-09-2014- 0004) against the West Park Elementary School District, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. R. G. Vigil
Superintendent
West Park Elementary School District
2695 South Valentine Avenue
Fresno, CA 93706-9042

Certified Mail No. 7005 3110 0002 8247 1490



Date: 01/13/14

Regional Hearing Clerk
United States Environmental Protection Agency, Region IX