

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

IN RE: :
: :
Phoenixville Area School District : Docket No: TSCA-03-2015-0170
386 City Line Avenue :
Phoenixville, PA 19460 : CONSENT AGREEMENT
Respondent :
:

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement (“CA”), issued under the authority set forth in sections 16 and 20 of TSCA, 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“Complainant”) and Phoenixville Area School District (“Respondent”). This CA includes the assessment of a civil penalty against Respondent because it is a local education agency liable for violations which occurred at Schuylkill Elementary School, Phoenixville Area Middle School and Phoenixville Area High School (the “Facilities”), pursuant to the Toxic Substances Control Act (“TSCA”), Subchapter II (the Asbestos Hazard Emergency Response Act or “AHERA”) 15 U.S.C. §§ 2641 to 2656; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R Part 22, with specific reference to the provisions set forth at 40 C.F.R. §§ 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

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EPA REGION III PHILA, PA

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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 sixteen thousand six hundred seventy-two dollars (\$16,672.00) since the EPA's inspection conducted on June 04, 2014 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, Phoenixville Area School District, 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, Schuylkill Elementary School, located at 290 South Whitehorse Road in Phoenixville, PA; Phoenixville Area Middle School, located at 1000 Purple Pride Parkway in Phoenixville, PA; and Phoenixville Area High School, located at 1200 Gay Street in Phoenixville, PA, 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. § 763.93(g)(1) & (2) provides that, upon submission of a management plan to the Governor for review, each LEA shall maintain in its administrative office a complete,

updated copy of a management plan for each school under its administrative control or direction. Furthermore, 40 C.F.R. § 763.93(g)(3) provides that each school shall maintain in its administrative office a complete, updated copy of the management plan for that school.

19. On June 04, 2014, authorized representatives of EPA conducted an inspection of management plan records maintained at Phoenixville Area High School pursuant to TSCA. During the inspection, records reviewed included the November 1988/April 1989 initial asbestos inspection report, a year 2000 abatement project report, a 2001 asbestos re-inspection report and 6-month periodic surveillance reports dated for 2012. The inspectors observed that Respondent had failed to ensure that the facility maintained a complete, updated copy of the management plan in the school's administrative office, by not including records concerning recent 6-month periodic surveillances, 3-year reinspections, annual notifications, response actions, and custodial / maintenance staff training records.
20. Respondent's failure to comply with the management plan requirements at the Facility from April 21, 1989 to June 04, 2014 is a violation of 40 C.F.R. § 763.93(g)(3), and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT II

21. The allegations contained in Paragraph 1 through 20 are incorporated herein by reference.
22. Pursuant to 40 C.F.R. § 763.93(a), on or before October 12, 1988, each local education

agency shall develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and submit the plan to an Agency designated by the Governor of the State in which the local education agency is located. The plan may be submitted in stages that cover a portion of the school buildings under the authority of the local education agency; (2) If a building to be used as part of a school is leased or otherwise acquired after October 12, 1988, the local education agency shall include the new building in the management plan for the school prior to its use as a school building. The revised portions of the management plan shall be submitted to the Agency designated by the Governor; (3) If a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school.

23. On June 04, 2014, EPA inspectors reviewed records kept for Schuylkill Elementary School, constructed in 2006, and Phoenixville Area Middle School, constructed in 2012, and observed that Respondent had failed to develop and submit asbestos management plans for Schuylkill Elementary School and Phoenixville Area Middle School. As a result, Respondent failed to comply with the asbestos management plan requirements pursuant to 40 C.F.R. § 763.93(a).
24. By failing to submit management plans for its Facilities constructed in 2006 and 2012, Respondent violated the requirements of 40 C.F.R. § 763.93(a) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

25. 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 five thousand eight hundred dollars (\$5,800.00) is appropriate.
26. 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.
27. Respondent certifies that it has spent at least sixteen thousand six hundred seventy-two dollars (\$16,672.00) since EPA's inspection conducted on June 04, 2014 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 five thousand

eight hundred dollars (\$5,800.00) of the civil penalty assessed against Respondent.

28. Respondent consents to the assessment of a five thousand eight hundred dollars (\$5,800.00) civil penalty with a cash component of zero (\$0.00) dollars.

V. Reservation of Rights

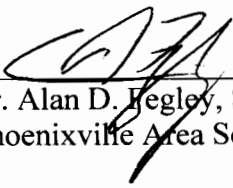
29. This CAFO resolves only the Federal civil penalties for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public 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


30. 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 representatives of Respondent certify that they are fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

For Respondent:

6/18/15
Date

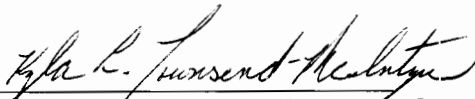

Dr. Alan D. Hegley, Superintendent
Phoenixville Area School District

6/18/15
Date


Dr. Daniel Cushing, School Board President
Phoenixville Area School District

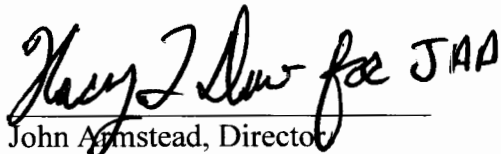
For Complainant:

06/26/2015
Date


Kyla L. Townsend-McIntyre, Enforcement Officer
Pesticides and Asbestos Programs Branch

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

7/15/2015
Date


John Arnstead, Director
Land and Chemicals Division

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Philadelphia, Pennsylvania 19103-2029

IN RE: :
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386 City Line Avenue : :
Phoenixville, PA 19460 : FINAL ORDER
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Respondent : :
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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 five thousand eight hundred dollars (\$5,800.00) but that the cash component of that civil penalty will be zero (\$0.00) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), five thousand eight hundred dollars (\$5,800.00) 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.

July 30, 2015
Date


Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region III

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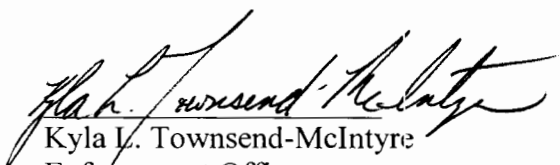
CERTIFICATE OF SERVICE

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. Alan D. Fegley, Superintendent


Phoenixville Area School District
Administration Office
386 City Line Avenue
Phoenixville, PA 19460



07/30/2015
Date

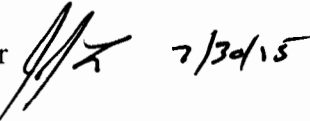

Kyla L. Townsend-McIntyre
Enforcement Officer
U.S. Environmental Protection Agency,
Region III

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

Subject: Toxic Substances Control Act
Phoenixville Area School District
Docket No. TSCA-03-2015-0170
Consent Agreement and Final Order

From:  Mary Coe, Regional Counsel
Office of Regional Counsel (3RC00)

John A. Armstead, Director  7/15/15
Land & Chemicals Division (3LC00)  also for JAA

To: Joseph J. Lisa, Regional Judicial Officer  7/30/15
Office of Regional Counsel (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and .18(b)(2), in settlement of alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 201 *et seq.*, by Phoenixville Area School District. A civil penalty of five thousand eight hundred dollars (\$5,800.00) with a cash component of zero dollars (\$0.00) has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for AHERA", dated January 31, 1989, as supplemented by the "Gravity Based Penalty Matrices for Violations, which occur after January 30, 1997, for AHERA Interim Final ERP" effective January 30, 1997, and EPA's September 21, 2004 "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective Date: October 1, 2004)".

TSCA Section 207(a) provides that any civil penalty under AHERA from a local education agency ("LEA") be reduced by the LEA's costs spent complying with AHERA requirements. The LEA in this case documented sixteen thousand six hundred seventy-two dollars (\$16,672.00) in costs following an inspection conducted in June of 2014 by EPA to comply with AHERA and, therefore, the cash component of the five thousand eight hundred dollars (\$5,800.00) assessed civil penalty is zero dollars (\$0.00). This is consistent with the "Assessing Administrative Civil Penalties Against an LEA" section of the 1989 Interim Final Enforcement Response Policy for AHERA.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).