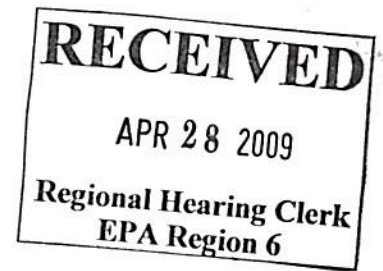


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS



IN THE MATTER OF:)
)
) DOCKET NO. TSCA-06-2009-6109
DESERT ACADEMY)
)
) CONSENT AGREEMENT
) AND
SANTA FE, NEW MEXICO) FINAL ORDER
)
)
RESPONDENT)

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Desert Academy, Santa Fe, New Mexico (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding is instituted by EPA pursuant to Section 207(a) of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2647(a), enacted as a section of Title II of TSCA, known as the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2641 *et seq.* This proceeding is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.41.
2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations of this CAFO; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
3. The Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for federal civil penalties for the violations alleged in the CAFO.
5. Each party to this action shall bear its own costs and attorney fees.
6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

8. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

9. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors, and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Statement

10. The Respondent is a public board of education or other public authority legally constituted within the State of New Mexico which has administrative control and direction of public elementary and secondary schools in Santa Fe, New Mexico.

11. Desert Academy in Santa Fe, New Mexico, is under the administrative control and direction of the Respondent.

12. The Respondent is a "local educational agency" as that term is defined in Section 202(7) of TSCA, 15 U.S.C. § 2642(7).

13. Desert Academy has one or more structures suitable for use as a classroom, library, school eating facility and/or gymnasium.

14. Desert Academy is 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.

15. On or about May 1, 2008, a representative of EPA conducted an inspection of the Respondent school listed in paragraph 11, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, to ensure compliance with the Asbestos-Containing Materials in Schools Rule, 40 C.F.R. Part 763, Subpart E.

16. On or about May 1, 2008, a written notice of inspection was issued to a representative of the Respondent, Mr. Kent Estes, as required by Section 11(a) of TSCA, 15 U.S.C. § 2610(a).

B. Violations

17. Paragraphs 1 – 16 are realleged and incorporated by reference.

18. 40 C.F.R. § 763.93(g)(2) requires the local educational agency to maintain in its administrative office, a complete, updated copy of the management plan for each school under its

administrative control. The school shall make management plans available for inspection to representatives of EPA and the State, the public, including parents, teachers, and other school personnel and their representatives within five working days of receiving a request for inspection.

19. At the time of the May 1, 2008 inspection the school maintained a copy of a Phase I Environmental Assessment Report in its administrative office, which is not a management plan. Therefore, Respondent failed to maintain a copy of the management plan in the administrative office of the school identified in Paragraph 11.

20. Therefore, the Respondent violated 40 C.F.R. § 763.93(g)(2), by failing to maintain a copy of the management plan in administrative office of Desert Academy.

III. CIVIL PENALTY

Section 207(a) of TSCA, 15 U.S.C. § 2647(a) authorizes EPA to assess a civil penalty of up to \$5,000 per day for each violation of TSCA set forth therein. This amount was increased to \$6,500 per day for each violation by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon the significance of the violation, the culpability of the violator, including any history of previous violations, the ability of the violator to pay the penalty, the ability of the violator to continue to provide educational services to the community, the violator's prompt return to compliance, and evidence that the violator's compliance cost exceeded the assessed penalty has resulted in the elimination of the assessed penalty.

IT IS SO AGREED:

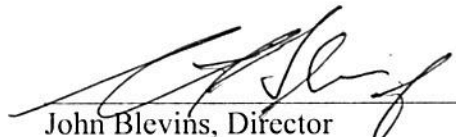
FOR THE RESPONDENT:

Date: 4-20-09


Randy Martinez, Facility Manager
Desert Academy

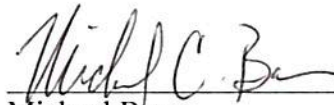
FOR THE COMPLAINANT:

Date: 4-27-09


John Blevins, Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

IV. FINAL ORDER

Pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the CAFO. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

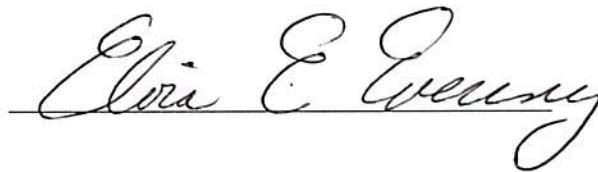
Dated: April 28, 2009

Michael Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2009, the original and one copy of the foregoing CAFO was hand delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct file-stamped copy of the fully executed CAFO was placed in the United States Mail, certified mail, return receipt requested, No. 7004 1160 0003 0360 2621, addressed to the following:

Mr. Randy Martinez
Facility Manager
Desert Academy
313 Camino Alire
Santa Fe, NM 87501

A handwritten signature in cursive script, reading "Elora E. Evemy", written over a horizontal line.