

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

**FILED**  
2012 MAR -1 PM 3:39  
U.S. EPA. REGION IX  
REGIONAL HEARING CLERK  
0003

In the matter of: ) Docket No. TSCA-09-2012-  
Apache Junction Unified ) **CONSENT AGREEMENT**  
School District ) and  
Respondent. ) **FINAL ORDER PURSUANT TO**  
 ) **SECTIONS 22.13 AND 22.18**  
 )

**I. CONSENT AGREEMENT**

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Apache Junction Unified 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 four elementary schools, one junior high school and one high school in Arizona. The Apache Junction Unified School District schools are public, state-funded schools constituted within the state of Arizona. The Apache Junction Unified School District is a public authority legally constituted within the State of Arizona for administrative control or direction of public elementary schools and secondary schools.

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 Number R9 1260.06A dated May 19, 2005, the Regional Administrator of EPA Region IX redelegated 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 **Desert Vista Elementary School** at 3701 E. Broadway Ave, Apache Junction, Arizona in or about 1988. Respondent began operating **Four Peaks Elementary School** in the current buildings at 1755 N. Idaho Road, Apache Junction, Arizona on or about 2008. Respondent began operating **Peralta Trail Elementary School** at 2535 South Ironwood Drive, Apache Junction, Arizona on or about 2001. Respondent began operating **Superstition Mountain Elementary School** at 550 S. Ironwood Drive, Apache Junction, Arizona on or before 1988. Respondent began operating **Cactus Canyon Junior High School** (previously called Desert Shadows) at 801 W. Southern Avenue, Apache Junction, Arizona in or before 1988. Respondent began operating **Apache Junction High School** at 2525 S. Ironwood Drive, Apache Junction, Arizona on or before 1988. 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 203(g) of TSCA, 15 U.S.C. § 2643(g), requires periodic inspections of all friable and nonfriable known or assumed asbestos containing building material in each school building. 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 has been submitted to EPA pursuant to Section 763.99(a)(7), then the LEA is not required to perform an inspection.

10. On April 11, 2011, an EPA inspector inspected Respondent's High School, and Respondent was unable to present an AMP for any of its schools. In a letter dated **June 30, 2011**, the EPA Region IX Toxics Office requested a copy of Respondent's AHERA asbestos management plans within 30 days. Respondent provided management plan updates dated June 24, 2011. The management plans document that the school buildings currently utilized by Desert Vista Elementary School, Four Peaks Elementary School, and Peralta Trail Elementary School do **not** contain asbestos-containing building material ("ACBM") (although the buildings currently used by the Boys and Girls Club which were previously part of the Four Peaks Elementary School does contain ACBM) and that the following schools **do** contain ACBM: 11,800 square feet of ACBM at **Apache Junction High School**; 9,500 square feet of ACBM at **Cactus Canyon Junior High School**; and 11,000 square feet of ACBM at **Superstition Mountain Elementary School**. The AMP updates document that Respondent had the following contemporaneous architect statements that the school buildings were built without ACBM: June 2007 for the buildings currently utilized at Four Peaks Elementary School, August 9, 2001 for the Peralta Trail Elementary School, and 1988 for the Desert Vista Elementary School. At the time of EPA's April 2011 inspection, Respondent had not developed AMPs for the buildings being

utilized as school buildings at **Four Peaks Elementary School; Peralta Trail Elementary School; and Desert Vista Elementary School**. At the time of EPA's April 2011 inspection, Respondent had not conducted a timely reinspection at **Superstition Mountain Elementary School; Cactus Canyon Junior High; and Apache Junction High School**.

11. Respondent violated Section 207(a)(1) of TSCA Title II, 15 U.S.C. § 2647(a)(1), by failing to conduct a reinspection, pursuant to Sections 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 referenced in Paragraph 8 above for **Superstition Mountain Elementary School; Cactus Canyon Junior High; and Apache Junction High School**.

12. Respondent violated Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), by failing to develop or 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 referenced in Paragraph 8 above for **Four Peaks Elementary School; Peralta Trail Elementary School; and Desert Vista Elementary School**.

#### **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 **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 Desert Vista Elementary School, Four Peaks Elementary School, Peralta Trail Elementary School, Superstition Mountain Elementary School, Cactus



Canyon Junior High School, and Apache Junction High School, and all other facilities under its control which are subject to AHERA requirements. The AHERA Management Plans for the above-named schools document that school buildings at **Superstition Mountain Elementary School; Cactus Canyon Junior High School; and Apache Junction High School** contain asbestos-containing building materials. 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 **SEVEN THOUSAND NINE HUNDRED AND THIRTY THREE DOLLARS (\$7,933)**, 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 **\$21,675** 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 17<sup>th</sup> 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](http://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 Consent Agreement and the Final Order 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.


**APACHE JUNCTION UNIFIED SCHOOL DISTRICT:**

Date: 1-26-2012 By: 

Name: Jim Lockwood

Title: Associate Superintendent

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

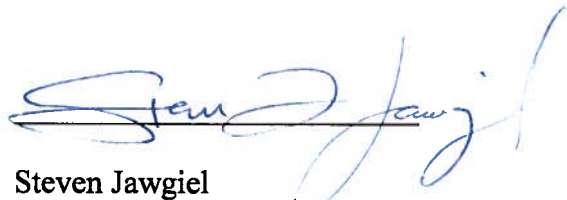
Date: 2/28/2012 By: 

ENRIQUE MANZANILLA  
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 **SEVEN THOUSAND NINE HUNDRED AND THIRTY THREE DOLLARS (\$7,933)** in accordance with the terms set forth in the Consent Agreement.

Date: 03/01/12

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", written over a horizontal line.

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-9-2012- 0003 ) against the Apache Junction Unified 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:

Dr. Chad Wilson  
Superintendent  
Apache Junction Unified School District  
1575 W. Southern Avenue  
Apache Junction, AZ 85120

Certified Mail No. 7001 0320 0002 4540 4730

*for*  
Steven Ramsey  
Bryan Goodwin  
Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX

Date: *Mar. 1, 2012*

*cc: M. Alkon*