

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

IN RE: :
: :
Lynchburg City Schools : Docket No: TSCA-03-2011-0048
915 Court Street : :
Lynchburg, Virginia 24505 : CONSENT AGREEMENT
: :
Respondent : :
:

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement ("CA"), issued under the authority set forth in sections 16 and 207 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 the Lynchburg City Schools ("LCS"). This CA includes the assessment of a civil penalty against LCS ("Respondent"), because it is a local education agency liable for violations which occurred at five (5) Lynchburg City Schools, located in Lynchburg, Virginia (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 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 thirty seven thousand five hundred dollars (\$37,500) since the EPA's August 2009 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, I.C.S, 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, including the Facilities, 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, including the Facilities and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.
15. The Facilities: 1) Dunbar Middle School, located at 1200-1208 Polk Street, in Lynchburg, VA 24504; 2) Robert S. Payne Elementary School, located at 1201 Floyd Street, in Lynchburg, VA 24501; 3) Linkhorne Elementary School, located at 2501 Linkhorne Drive, in Lynchburg, VA 24503; 4) Sandursky Elementary School, located at 5828 Apache Lane, in Lynchburg, VA 24502; and 5) Glass High School, located at 2111 Memorial Avenue, located in Lynchburg, VA 24502, are "school[s]" 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[s]" 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(b)(1) requires that at least once every 3 years after a management plan is in effect, each LEA conduct reinspections of all friable and nonfriable known or assumed asbestos containing building materials (“ACBM”) in each school building that they lease, own, or otherwise use as a school building.
19. During inspections conducted in August 2009, the EPA inspector observed that LCS did not conduct reinspections at each of the five Facilities.
20. Respondent’s failure to conduct reinspections at each of the five Facilities for ACBM are violations of 40 C.F.R. § 763.85(b)(1), and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

21. The allegations contained in Paragraph 1 through 20 are incorporated herein by reference.
22. 40 C.F.R. § 763.93(g)(1)-(3) require that LEAs maintain completed and updated copies of management plans in LEA and school administrative offices, and make them available for inspection in accordance with 40 C.F.R. § 763.93(g)(1).
23. During the inspections in August 2009, EPA inspected the following LCS Facilities: 1) Dunbar Middle School, located at 1200-1208 Polk Street, in Lynchburg, VA 24504; 2) Robert S. Payne Elementary School, located at 1201 Floyd Street, in Lynchburg, VA 24501; 3) Linkhorne Elementary School, located at 2501 Linkhorne Drive, in Lynchburg, VA 24503; 4) Sandursky Elementary School, located at 5828 Apache Lane, in

Lynchburg, VA 24502; and 5) Glass High School, located at 2111 Memorial Avenue, located in Lynchburg, VA 24502.

24. During the August 2009 inspections, the EPA inspector observed that the management plans were not available at the LEA district administrative office, nor at the Facilities as listed above.
25. As a result, based on currently available information, EPA concludes that the LCS failed to comply with the requirements of 40 C.F.R. § 763.93(g)(1)-(3).

IV. Settlement Recitation

26. 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 Respondent's TSCA violations. 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 thirty seven thousand five hundred dollars (\$37,500) is appropriate.
27. 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.

28. Respondent certifies that it has spent at least thirty seven thousand five hundred dollars (\$37,500) since EPA's August 2009 inspection 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 thirty seven thousand five hundred dollars (\$37,500) of the civil penalty assessed against the Respondent.
29. Respondent consents to the assessment of a thirty seven thousand five hundred dollar penalty (\$37,500) with a cash component of zero (\$0) dollars.

V. Reservation of Rights

30. 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

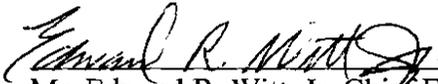
31. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

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:

November 23, 2010

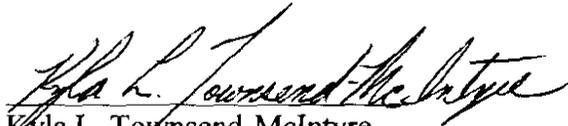
Date


Mr. Edward R. Witt, Jr. Chief Executive
Lynchburg City Schools

For Complainant:

12/9/2010

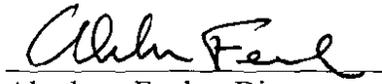
Date


Kyla L. Townsend-McIntyre
Enforcement Officer

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

12/9/10

Date


Abraham Ferdas, Director
Land and Chemicals Division



