

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

FILED

2008 MAY 12 PM 3:42

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of:) Docket No. TSCA-09-2008- 00 04
)
) CONSENT AGREEMENT
Portable Practical) and
Educational Preparation, Inc.)
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 Portable Practical Educational Preparation, Inc. (hereafter "**Respondent**" or "PPEP") 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(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 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 763.93(g)(2) of the Subpart E regulations provides that 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. 40 C.F.R. § 763.93(g)(2). 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 management plan for that school. 40 C.F.R. § 763.93(g)(3).

4. Sections 207(a)(1) and 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), provides that any LEA that fails to conduct an inspection, or fails to develop a management plan, 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 of (1) not more than \$ 5,000 for each day during which a violation continues, for violations on or before January 30, 1997; (2) not more than \$ 5,500 for each day during which a violation

continues, for violations after January 30, 1997 but on or before March 15, 2004; and (3) not more than \$ 6,500 for each day during which a violation continues, for violations after March 15, 2004.

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 holds charters for “Lito” Pena Learning Center, Manuel Bojorquez Learning Center, Raul H. Castro Learning Center, Cesar Chavez Learning Center, Jose Yepez Learning Center, Celestino Fernandez Learning Center, John David Arnold Learning Center, Victor Soltero Learning Center, Eugene Lopez Learning Center, Robles Junction Learning

Center, the Alice S. Paul Learning Center, and Arizona Virtual Academy. Each of these schools is an Arizona Charter school. Arizona Charter schools are public, state-funded schools constituted within the state of Arizona pursuant to the Arizona Charter School Law of 1994. See Arizona Revised Statutes Education Code §15-181 to §15-189. Arizona Charter schools contract with the Arizona State Board of Education, the Arizona State Board for Charter Schools, or a district to provide an education service.

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 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 for each of the schools listed in Paragraph 6. Respondent is a "Local Educational Agency" ("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 Title II, 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 have developed a valid asbestos management plan. Section 207(a)(3) of TSCA Title II, 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 asbestos management plan, 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 Title II.

10. In 1995, Respondent opened the "Lito" Pena Learning Center, the Celestino Fernandez Learning Center, Cesar Chavez Learning Center, Jose Yepez Learning Center, Raul H. Castro Learning Center and the Victor Soltero Learning Center. The 'Lito' Pena Learning Center is located at 725 N. Central Avenue 113 Avondale, Arizona. The Celestino Fernandez Learning Center is located at 1840 E. Benson Highway Tucson, Arizona. The Cesar Chavez Learning Center is located at 1233 N. Main Street San Luis Arizona. The Jose Yepez Learning Center is located at 115 N. Columbia Avenue, Somerton Arizona. The Raul H. Castro Learning Center is located at 530 12th Street Douglas, Arizona. The Victor Soltero Learning Center is located at 8677 E. Golf Links Road, Tucson, Arizona. Respondent opened the John David Arnold Learning Center and the Manuel Bojorquez Learning Center in 1996. The John David Arnold Learning Center is located at 4140 W. Ina Road, Tucson Arizona. The Manuel Borjorquez Learning Center is located at 203 Bisbee Road, Bisbee Arizona. Respondent opened the Eugene Lopez Learning Center in 1997. The Eugene Lopez Learning Center is located at 158 West Maley Willcox, Arizona. Respondent opened the Robles Junction Learning Center in 2005. The Robles Junction Learning Center is located at 10451 So. Sasabe Road, Robles Junction. Respondent opened the Arizona Virtual Academy in 2001. The Arizona Virtual

Academy is located at 4501 N. 22nd Street Phoenix and on 4595 South Palo Verde in Tucson.

11. On May 23, 2006, EPA investigators inspected the Celestino Fernandez Learning Center and the school was unable to present an AHERA asbestos management plan. In a letter dated July 17, 2006, Paula Bisson of the EPA Region 9 Toxics Office requested to see a copy of the school AHERA asbestos management plans within 30 days. In a letter dated August 1, 2006, Respondent stated that Respondent did not have inspection reports or management plans for some of their facilities. As of July 17, 2006, Respondent had not conducted inspections nor had Respondent developed asbestos management plans for "Lito" Pena Learning Center, Celestino Fernandez Learning Center, Cesar Chavez Learning Center, Jose Yopez Learning Center, Raul H. Castro Learning Center, Victor Soltero Learning Center, John David Arnold Learning Center, Manuel Bojorquez Learning Center, Eugene Lopez Learning Center, Robles Junction Learning Center and the Arizona Virtual Academy. As of August, 2006, Respondent had not reinspected the Alice S. Paul Learning Center, as required by 40 C.F.R. § 763.85(b).

12. Respondent violated Section 207(a)(1) of TSCA Title II, 15 U.S.C. § 2647(a)(1), by failing to conduct an inspection (or required re-inspection), pursuant to Section 203(b) of TSCA Title II, 15 U.S.C. § 2643(b), and regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school buildings referenced in Paragraph 8 above.

13. Respondent violated Section 207(a)(3) of TSCA Title II, 15 U.S.C. § 2647(a)(3), by failing to develop an asbestos management plan, pursuant to Section 203(i) of TSCA Title II, 15 U.S.C. § 2643(i), and regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school buildings (other than the Alice S. Paul Learning Center school building) referenced in Paragraph 8 above.

D. RESPONDENT'S ADMISSIONS

14. 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.E 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

15. 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 asbestos-containing building material ("ACBM") or assumed to contain asbestos-containing material ("ACM").

(B) Maintenance of a complete copy of the new 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.

16. In executing this CAFO, Respondent certifies that it has complied with AHERA and the AHERA Subpart E regulations at each of the schools listed in Paragraph 6, and all other facilities under its control which are subject to AHERA requirements. Respondent certifies that, after EPA's May, 2006 inspection, Respondent had inspections conducted by qualified inspectors and management plans prepared at each of the schools listed in Paragraph 6. Respondent certifies that all accounting of the costs incurred by Respondent in complying with AHERA provided to EPA is true and accurate.

F. CIVIL ADMINISTRATIVE PENALTY

17. Respondent consents to the assessment of a penalty in the amount of **EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500)**, 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 to reflect the EPA approved costs of Respondent's compliance with AHERA and the AHERA Subpart E regulations.

18. Respondent shall pay the civil penalty amount required by Paragraph 17 within **thirty (30)** calendar days of the effective date of this CAFO. Payment shall be made by cashier's or

certified check, payable to the order of the "Treasurer of the United States of America." The check shall state on the reverse side, "For Deposit Into the Asbestos Trust Fund, 20 U.S.C. § 4022" and shall be accompanied by a cover letter identifying this CAFO, the docket number, and stating that payment is being made pursuant to Section E of this Agreement. Respondent shall mail the check and the letter by Certified Mail, Return Receipt Requested, to the following address:

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

When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- 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

19. 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.

20. 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.

21. 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.

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

23. Except as set forth in Paragraph 20 above, each party shall bear its own costs, fees, and disbursements in this action.

24. 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.

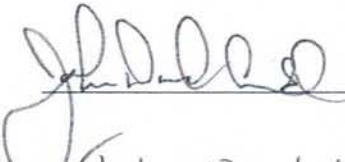
25. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil 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.

26. 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.

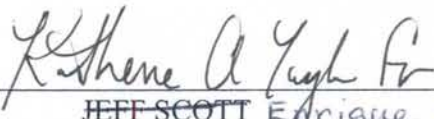
27. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind

that party to it.

PORTABLE PRACTICAL EDUCATIONAL PREPARATION, INC. :

Date: 3/26/08 By: 
Name: John David Arnold
Title: CEO


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: May 9, 2008 By: 
~~JEFF SCOTT~~ Enrique Manzanilla
Acting 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 **EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500)** in accordance with the terms set forth in the Consent Agreement.

Date: 05/12/08

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

100409

OUR REF. NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	DESCRIPTION	NET CHECK AMOUNT
109333		3/27/2008	18500.00	ASBESTOS PENALTY	18500.00

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER



Since 1967

PORTABLE PRACTICAL EDUCATIONAL PREPARATION, INC.

802 E. 46th STREET
TUCSON, AZ 85713
(520) 622-3553 www.ppep.org

JPMorgan Chase Bank, NA
16th Ave.-Ajo Way Office (118)
Tucson, Arizona

91-2/1221

CHECK DATE

CONTROL
NUMBER

100409

AMOUNT

3/27/2008

100409

\$*****18500.00

PAY Eighteen Thousand Five Hundred and 00/100----- Dollars

TWO SIGNATURES REQUIRED
VOID 180 DAYS AFTER ISSUE

TO THE
ORDER
OF

TREASURER OF THE UNITED STATES
ATTN: ASBESTOS TRUST FUND
PO BOX 979077
ST LOUIS, MO 63197-9000

Amel Cel
Baron alborado

MP

MP

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈ 100409 ⑈ ⑆ 122100024 ⑆

01734129⑈

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-9-2008- 00 004) against the Portable Practical Educational Preparation, Inc., 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:

Patrick Paul, Esq.
Snell & Wilmer L.L.P.
One Arizona Center
Tucson, AZ 85004-2202

Certified Mail No. 7001 0710 0003 6239 9028



Danielle Carr
Regional Hearing Clerk
United States Environmental Protection Agency, Region IX

Date

