



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

VIA OVERNIGHT MAIL

Deborah A. Hogan, Director
Monkton Country Daycare and Preschool
1930 Monkton Road
Monkton, MD 21111

JUN 29 2010

Re: **Monkton Country Daycare and Preschool**
Docket No. TSCA-03-2010-0304

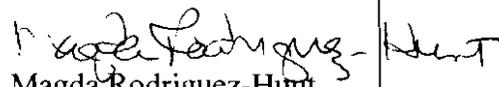
Dear Ms. Hogan:

Enclosed, please find a copy of the final Consent Agreement ("CA") and Final Order (collectively "CAFO") resolving Docket # TSCA-03-2010-0304.

The CAFO was signed by the Regional Judicial Officer on June 29, 2010 and filed with the Regional File Clerk on June 29, 2010. The Monkton United Methodist Church is required, within thirty (30) days of receipt of the final CAFO, to pay the cash component of the civil penalty in the amount of ONE THOUSAND FOUR HUNDRED NINETY (\$1,490) dollars. Instructions on how to make payment can be found in Item #33 of the CAFO.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (215) 814-2128.

Sincerely,


Magda Rodriguez-Hunt
Enforcement Officer

Enclosure

cc: Reverend Stacey Nickerson
Monkton United Methodist Church

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

**Monkton United Methodist Church
1930 Monkton Road
Monkton, MD 21111**

Respondent

**Monkton Country Daycare and Preschool :
1930 Monkton Road
Monkton, MD 21111**

Facility

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. TSCA-3-2010-0304

Consent Agreement
Final Order
TSCA-3-2010-0304
JUN 29 2010
PHILADELPHIA, PA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 29, 2010, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2010-0304) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On June 29, 2010, a true and correct copy of the Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2010-0304) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

**Deborah A. Hogan, Director
Monkton Country Daycare and Preschool
1930 Monkton Road
Monkton, MD 21111**

**Reverend Stacey E. Nickerson
Monkton United Methodist Church
1930 Monkton Road
Monkton, MD 21111**

Date: 6/29/10

Magda Rodriguez-Hunt

**Magda Rodriguez-Hunt
Enforcement Officer
U.S. EPA - Region III**

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

IN RE:

Monkton United Methodist Church
1930 Monkton Road
Monkton, MD 21111

Respondent

Monkton Country Daycare and Preschool
1930 Monkton Road
Monkton, MD 21111

Facility

DOCKET NO: TSCA-03-2010-0304

CONSENT AGREEMENT

RECEIVED
EPA REGION III
PHILADELPHIA, PA
MAY 10 2010

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement ("CA"), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Monkton United Methodist Church. This CA includes the assessment of a civil penalty against Monkton United Methodist Church ("Respondent"), because it is a local education agency liable for violations which occurred at Monkton Country Daycare and Preschool, 1930 Monkton Road, Monkton, MD 21111 (the "Facility"), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641 to 2656 ("TSCA AHERA"). This action is brought in accordance with TSCA AHERA 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 TSCA AHERA and the federal regulations implementing TSCA 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 of TSCA AHERA alleged herein.

II. General Provisions

1. For 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 EPA's 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 Facility is in compliance with the provisions of TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
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 FOUR THOUSAND THIRTY FIVE DOLLARS (\$ 4,035) since the Maryland Department of the Environment's ("MDE") June 28, 2007 inspection for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 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 AHERA and the federal regulations implementing TSCA 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, Monkton United Methodist Church, is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA AHERA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is the owner of a nonpublic, non-profit elementary, or secondary school building, including the Facility, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of TSCA AHERA.
15. The Facility, Monkton Country Daycare and Preschool, located at 1930 Monkton Road, Monkton, MD 21111 is a "school" as that term is defined at Section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.
16. The Facility is a "school building" as that term is defined at Section 202(13) of TSCA AHERA, 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(a) requires that any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected to identify all locations of friable and nonfriable asbestos containing building material (asbestos inspection) ...prior to use as a school building.
19. During a June 28, 2007 inspection of Monkton Country Daycare and Preschool, a Maryland Department of the Environment ("MDE") duly authorized inspector observed

that Monkton United Methodist Church had not performed an initial asbestos inspection of the school building.

20. By failing to conduct an initial asbestos inspection at the school, Respondent violated the requirements of 40 C.F.R § 763.85(a) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1).

COUNT II

21. The allegations contained in Paragraphs 1 through 20 are incorporated herein by reference.
22. 40 C.F.R. § 763.93(a)(3) requires that 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. During a June 28, 2007 inspection of Monkton Country Daycare and Preschool, an MDE duly authorized inspector found that Monkton United Methodist Church not submitted a management plan to the state designated agency.
24. By failing to submit a management plan to the state designated agency, Respondent violated the requirements of 40 C.F.R. § 763.93(a)(3). By failing to conduct an initial inspection at the school, Respondent violated the requirements of 40 C.F.R § 763.93(a)(3) and Section 207(a)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

COUNT III

25. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.

26. 40 C.F.R. § 763.93(g)(4) requires that at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of the management plan for their review.
27. During a June 28, 2007 inspection of Monkton Country Daycare and Preschool, an MDE duly authorized inspector found that Monkton United Methodist Church had not been providing annual notification to parent, teacher, and employee organizations since the Facility had been operating as a school building.
28. By failing to provide any annual notification since the Facility had been operating as a school building, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

29. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), for Respondent's TSCA AHERA 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 AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of FIVE THOUSAND FIVE HUNDRED AND TWENTY FIVE DOLLARS (\$ 5,525) is appropriate.
30. 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

deliveries shall be sent to U.S. Bank, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101.) All payments made by check shall reference the above case caption and docket number, TSCA-03-2010-0304. Questions regarding payments made by check should be directed to Natalie Pearson at 314-418-4087. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 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"). All Automated Clearinghouse or REX payments shall be directed to PNC Bank, 808 17th Street NW, Washington DC 20074, ABA No. 051036706, Transaction Code 22 – checking, Environmental Protection Agency, Account No. 310006, CTX Format. Questions regarding payments made through the Automated Clearinghouse should be directed to Jesse White at 301-887-6548. The online payment option can accessed at WWW.PAY.GOV and by entering "sfo 1.1" in the search field. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, Automated Clearinghouse, or online payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Magda Rodriguez-Hunt (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to

cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

V. Reservation of Rights

35. 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 TSCA AHERA, 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.

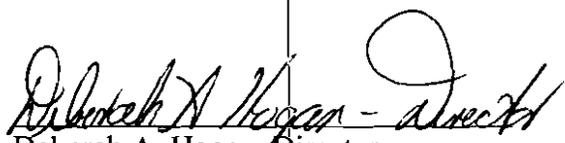
VI. Effective Date

36. 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:

6/4/10
Date


Deborah A. Hogan, Director
Monkton Country Day Care and Preschool

For Complainant:

6/18/10
Date

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Enforcement Officer

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

6/25/10
Date

Abraham Ferdas
for Abraham Ferdas, Director
Land and Chemicals Division

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

IN RE:

Monkton United Methodist Church
1930 Monkton Road
Monkton, MD 21111

Respondent

Monkton Country Daycare and Preschool
1930 Monkton Road
Monkton, MD 21111

Facility

DOCKET NO: TSCA-03-2010-0304

FINAL ORDER

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 Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$ 5,525), but that the cash component of that civil penalty will be ONE THOUSAND FOUR HUNDRED NINETY DOLLARS (\$ 1,490).



In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), FOUR THOUSAND THIRTY FIVE DOLLARS (\$ 4,035) 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.

6/29/10
Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

