

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

IN RE:

Grace United Methodist Church
110 W. Bel Air Ave.
Aberdeen, MD 21001

Respondent

Grace Cooperative Nursery
110 W. Bel Air Ave.
Aberdeen, MD 21001

Facility

Docket No. TSCA-03-2009-0049

Consent Agreement
and Final Order

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029 and that true and correct copies were served via FEDEX upon the following person:

Robert T. Clipp, Pastor
Grace United Methodist Church
110 W. Bel Air Ave.
Aberdeen, MD 21001

Mary Ann Magee, Director
Grace Cooperative Nursery
110 W. Bel Air Ave.
Aberdeen, MD 21001

Date: 2/11/09

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Compliance Officer
U.S. EPA - Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Respondent

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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 ("EPA" or "Complainant") and Grace United Methodist Church. This CA includes the assessment of a civil penalty against Grace United Methodist Church, ("Respondent"), because it is a local education agency liable for violations which occurred at Grace Cooperative Nursery (the "Facility"), 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 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 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 ONE THOUSAND DOLLARS (\$ 1,000.00) since the Maryland Department of the Environment's January 24, 2007 inspection 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/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, Grace United Methodist Church, 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 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, Grace Cooperative Nursery, located at 110 W. Bel Air Avenue, Aberdeen, MD is a "school" 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 Facility 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.

COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.

18. Section 40 C.F.R. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.
19. During an inspection of January 24, 2007, the Maryland Department of the Environment (“MDE”) documented that Grace United Methodist Church had not conducted 3-year reinspections at Grace Cooperative Nursery after the management plan was in effect.
20. By failing to conduct 3-year reinspections at Grace Cooperative Nursery, Respondent violated the requirements of 40 C.F.R. § 763.85(b)(1).

COUNT II

21. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
22. Section 40 C.F.R. § 763.93(e) requires that the management plan include, among other things, whether the school building contains or is assumed to contain friable/nonfriable Asbestos Containing Building Material (“ACBM”), recommendations to the LEA regarding response actions, a plan for reinspection and other related asbestos maintenance activities, and an evaluation of resources needed to complete response actions.
23. During an inspection of January 24, 2007, the MDE documented that Grace United Methodist Church failed to ensure that the management plan for Grace Cooperative Nursery included the information referenced in paragraph 22 consistent with 40 C.F.R. § 763.93(e).

24. By failing to include the information referenced in paragraph 22 in the Grace Cooperative Nursery management plan, Respondent violated the requirements of 40 C.F.R. § 763.93(e).

IV. Settlement Recitation

25. 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, 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, 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 TWENTY FIVE DOLLARS (\$ 5,525.00) is appropriate.
26. 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.
27. Respondent certifies that it has spent ONE THOUSAND DOLLARS (\$ 1,000.00) since

MDE's January 24, 2007 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 ONE THOUSAND DOLLARS (\$ 1000.00) of the civil penalty assessed against the Respondent.

28. Respondent consents to the assessment of a FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLAR (\$ 5,525.00) civil penalty, with a cash component of FOUR THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$4,525.00).
29. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by cashier's or certified check, electronic wire transfer, Automated Clearinghouse, or online. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000. (Fedex and other non-U.S. Postal Service express mail 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-03-2009-0049. 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 Ms. Magda Rodriguez-Hunt (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

30. 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

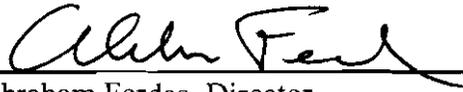
accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). 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

31. 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

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

1/21/09
Date


Abraham Ferdas, Director
Land and Chemicals Division

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

Subject: **Toxic Substances Control Act**
Grace United Methodist Church
Docket No. TSCA-03-2009-0049
Consent Agreement and Final Order

From: *WR* William C. Early, Regional Counsel *Robert J. Smith*
Office of Regional Counsel (3RC00)

Abe Ferdas, Director *Abbe Ferdas*
Land and Chemicals Division (3LC00)

To: Renée Sarajian, Regional Judicial Officer
Office of Regional Counsel (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and .18(b)(2), in settlement of alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 201 *et seq.*, by Grace United Methodist Church. A civil penalty of FIVE THOUSAND FIVE HUNDRED TWENTY FIVE (\$ 5,525.00) dollars has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for AHERA", dated January 31, 1989, as supplemented by the "Gravity Based Penalty Matrices for Violations, which occur after January 30, 1997, for AHERA Interim Final ERP" effective January 30, 1997, and EPA's September 21, 2004 "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective Date: October 1, 2004)". TSCA Section 207(a) provides that any civil penalty under AHERA from a local education agency ("LEA") be reduced by the LEA's costs spent complying with AHERA requirements. This reduction is reflected in the final cash penalty of FOUR THOUSAND FIVE HUNDRED TWENTY FIVE (\$ 4,525.00) dollars.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

cc: Robert T, Clipp, Pastor
Grace United Methodist Church

Mary Ann Magee, Director
Grace Cooperative Nursery

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

IN RE:

Respondent:

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110 W. Bel Air Avenue
Aberdeen, MD 21001

Docket No. TSCA-03-2009-0049

Final Order

Facility:

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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 Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 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, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$ 5,525.00), with a cash component of FOUR THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$ 4,525.00).

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), ONE THOUSAND DOLLARS (\$1000.00) of the FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLAR



(\\$ 5,525.00) 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.

2/9/09
Date

Renee Sarajian

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

