

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

FILED

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U.S. EPA REGION 5
HEARING CLERK

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| In the Matter of: |) | Docket No. TSCA-05-2026-0013 |
| |) | |
| Menominee Area Public Schools |) | Proceeding to Assess a Civil Penalty |
| Menominee, Michigan |) | Under Section 207(a) of the |
| |) | Toxic Substances Control Act, 15 U.S.C. |
| Respondent. |) | § 2647(a) |
| _____ |) | |

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 207 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2647, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Regional Administrator of the U.S. Environmental Protection Agency, Region 5 (“EPA”).

3. Respondent is the Menominee Area Public Schools (“the District” or “Respondent”).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. This CAFO addresses alleged violations by Respondent of Subchapter II of TSCA, known as the Asbestos Hazard Emergency Response Act (hereinafter “TSCA-AHERA”), 15 U.S.C. §§ 2641 to 2656, and the federal regulations implementing TSCA-AHERA as set forth at 40 C.F.R. Part 763, Subpart E. This CAFO resolves Complainant’s civil claims against Respondent arising from the violations alleged herein.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO, and waives all rights to file a petition for judicial review in the United States Court of Appeals pursuant to Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3), as provided by Section 207(a) of TSCA, 15 U.S.C. § 2647(a), regarding any term of settlement set forth in this CAFO. In addition, by signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

10. Complainant has determined that Respondent 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.

11. TSCA-AHERA, 15 U.S.C. §§ 2641-2656, was enacted by Congress to provide for the establishment of federal regulations which require inspections for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner; to mandate safe and complete periodic re-inspection of school buildings following response actions, where appropriate; and to require EPA to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial

buildings and the means to respond to any such danger. 15 U.S.C. § 2641(b). In passing TSCA-AHERA, Congress also directed EPA to promulgate regulations that require local educational agencies to, among other things, inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. 15 U.S.C. § 2643.

12. In accordance with TSCA-AHERA, EPA promulgated the Asbestos-Containing Materials in Schools Rule (“the Rule”) at 40 C.F.R. Part 763, Subpart E (§§ 763.80 – 763.99) on October 30, 1987 (*52 Fed. Reg. 41846* (Oct. 30, 1987)). The Rule requires local educational agencies to identify friable and nonfriable asbestos-containing material (ACM) in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in the rule. The Rule requires local educational agencies to develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and to submit the plan to an agency designated by the Governor of the State in which the local educational agency is located, and complete implementation of the plans in a timely fashion. In addition, local educational agencies are required to use persons who have been accredited to conduct inspections and re-inspections, to develop management plans, or to perform response actions. The Rule also includes recordkeeping requirements. 40 C.F.R. § 763.93(a) – (i). Local educational agencies may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties.

13. Section 11 of TSCA, 15 U.S.C. § 2610, provides EPA with authority to conduct inspections upon the presentation of appropriate credentials and written notice.

14. Section 202(4) of TSCA-AHERA, 15 U.S.C. § 2642(4), and the Rule at 40 C.F.R. § 763.83, define the term “asbestos-containing material” as any material which contains more than one percent (1%) asbestos by weight.

15. The Rule at 40 C.F.R. § 763.83, defines the term “asbestos-containing building material” (ACBM) as surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

16. Section 202(7) of TSCA-AHERA, 15 U.S.C. § 2642(7), and the Rule at 40 C.F.R. § 763.83, define the term “local educational agency” or “local education agency” as, *inter alia*, any local educational agency as defined in 20 U.S.C. § 7801¹; the latter statute in turn defines “local educational agency” as 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 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, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

17. Section 202(9) of TSCA-AHERA, 15 U.S.C. § 2642(9) defines the term “Non-profit elementary or secondary school” as any elementary or secondary school (as defined in 20 U.S.C. § 7801) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

18. The Rule at 40 C.F.R. § 763.83, defines the term “operations and maintenance program” (“O&M program”) as a program of work practices to maintain friable ACBM in good condition, ensure clean-up of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

19. Section 202(11) of TSCA-AHERA, 15 U.S.C. § 2642(11), and the Rule at 40 C.F.R. § 763.83, define the term “response action” as a method (including removal, encapsulation, enclosure,

¹ The Rule at 40 C.F.R. § 763.83 defines “local educational agency” as any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 3381). The definitions in 20 U.S.C. § 3381 were later consolidated into 20 U.S.C. § 7801.

repair, operations and maintenance) that protects human health and the environment from friable ACBM. Such methods include methods described in chapters 3 and 5 of the EPA's "Guidance for Controlling Asbestos-Containing Materials in Buildings."

20. Section 202(12) of TSCA-AHERA, 15 U.S.C. § 2642(12), and the Rule at 40 C.F.R. § 763.83, define the term "school" as any elementary or secondary school as defined in 20 U.S.C. § 7801².

21. Section 202(13) of TSCA-AHERA, 15 U.S.C. § 2642(13), and the Rule at 40 C.F.R. § 763.83, define the term "school building" as: (1) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food; (2) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education; (3) any other facility used for the instruction of students or for the administration of educational or research programs; and, (4) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (1), (2) or (3), above; (5) any portico or covered exterior hallway or walkway; or (6) any exterior portion of a mechanical system used to condition interior space.

22. The regulation at 40 C.F.R. § 763.99 provides that a local educational agency shall not be required to perform an inspection under 40 C.F.R. § 763.85(a) in any sampling area as defined in 40 C.F.R. § 763.103 or homogeneous area of a school building where: (1) an accredited inspector has determined that, based on sampling records, friable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987; (2) an accredited inspector has determined that, based on sampling records, nonfriable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987; (3) based on sampling

² The Rule at 40 C.F.R. § 763.83 defines "school" as any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854). The definitions in 20 U.S.C. § 2854 were later consolidated into 20 U.S.C. § 7801.

records and inspection records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987 in substantial compliance with 40 C.F.R. § 763.85(a), which for purposes of this section means in a random manner and with a sufficient number of samples to reasonably ensure that the area is not ACBM; (4) the lead agency responsible for asbestos inspection in a State that has been granted a waiver from 40 C.F.R. § 763.85(a) has determined that, based on sampling records and inspection records, no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987, in substantial compliance with 40 C.F.R. § 763.85(a); (5) an accredited inspector has determined that, based on records of an inspection conducted before December 14, 1987, suspected ACBM identified in that homogeneous or sampling area is assumed to be ACM; (6) based on inspection records and contractor and clearance records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area where asbestos removal operations have been conducted before December 14, 1987; or (7) an architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building, or, to the best of his or her knowledge, no ACBM was used as a building material in the building.

General Allegations

23. Paragraphs 1 through 22 are incorporated by reference as if set forth in full herein.

24. The Menominee Area Public Schools (Respondent) is a public school district with an administrative office located at 1230 13th Street, in the City of Menominee, Menominee County, Michigan.

25. Respondent is a “Local Educational 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 (“local education agency”).

26. During calendar years 2020 to 2023, Respondent owned and managed three (3) school buildings that contained asbestos-containing building material (ACBM) with no asbestos exclusion statement under 40 C.F.R. § 763.99. These 3 buildings were located at the addresses listed in Table 1, below:

Table 1: School Buildings Owned and Managed by Menominee Area Public Schools

| No. | School Name | Address | Exclusion Statement |
|-----|---|--|---------------------|
| 1 | Central Elementary School | 1800 18 th Avenue, Menominee, MI 49858 | None |
| 2 | Blesch Elementary School and Administration | 1200 11 th Avenue, Menominee, MI 49858 | None |
| 3 | Menominee Area Jr./Sr. High School | 2101 18 th Street, Menominee, MI 49858 | None |

27. At all times relevant to this CAFO, each of the 3 school buildings referenced in paragraph 26 and Table 1, above, was 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.

28. At all times relevant to this CAFO, each of the 3 school buildings referenced in paragraph 26 and Table 1, above, was a “Non-profit elementary or secondary school” as that term is defined at Section 202(9) of TSCA-AHERA, 15 U.S.C. § 2642(9).

29. At all times relevant to this CAFO, each of the 3 school buildings referenced in paragraph 26 and Table 1, above, was 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.

30. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), among other things, makes it unlawful for any person to fail to comply with any requirement of TSCA, or any rule promulgated under TSCA, including Subsection II of TSCA (TSCA-AHERA) and any rule promulgated thereunder.

31. Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), provides, *inter alia*, that any local educational agency which fails to develop an asbestos management plan pursuant to regulations under Section 2643(i) of TSCA-AHERA, 15 U.S.C. § 2643(i), is liable for a civil penalty of not more

than \$14,308 for each day during which the violation continues.

32. Section 207 of TSCA-AHERA, 15 U.S.C. § 2647, also provides that any civil penalty for the violations enumerated in that section of the statute 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.

33. Section 207 of TSCA-AHERA, 15 U.S.C. § 2647, provides that, for purposes of the civil penalty provisions of the statute, a “violation” means a failure to comply with respect to a single school building.

Count 1 to 3 – Failure to Include Necessary Elements in Management Plan

34. Paragraphs 1 through 33 are incorporated by reference as if set forth in full herein.

35. 40 C.F.R. § 763.93(e) requires that each asbestos management plan shall be developed by an accredited management planner and shall include twelve elements which are summarized in Attachment 1 to this CAFO.

36. Between in or about 2020 and in or about 2023, for each of the three (3) school buildings referenced in paragraph 26 and identified in Table 1, above, Respondent failed to include element no. 8 (a detailed description in the form of a blueprint, diagram, or in writing of any ACBM or suspected ACBM assumed to be ACM which remains in the school once response actions are undertaken pursuant to 40 C.F.R. § 763.90) and element no. 11 (an evaluation of the resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance and training), which are required to be included in each asbestos management plan by 40 C.F.R. § 763.93(e).

37. Respondent’s failure to include element no. 8 and element no. 11 in the asbestos management plan for each of the three (3) school buildings identified above constitutes three (3) separate and distinct violations of 40 C.F.R. § 763.93(e) and Section 207(a)(3) of TSCA-AHERA, 15

U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$14,308 for each day during which each violation continues.

Count 4 to 6 – Failure to Maintain an Updated Copy of the Management Plans for Each School Building in the District Administrative Office

38. Paragraphs 1 through 33 are incorporated by reference as if set forth in full herein.

39. 40 C.F.R. § 763.93(g)(1) and (g)(2) require that a Local Educational Agency must maintain in its administrative office a complete, updated copy of an asbestos management plan for each school under its administrative control or direction, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents.

40. Between in or about 2020 and in or about 2023, Respondent failed to maintain in its administrative office a complete, updated copy of a management plan for each of the three (3) school buildings under its administrative control or direction, referenced in paragraph 26 and identified in Table 1, above, and failed to make the plans available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents.

41. Respondent's failure to maintain in its administrative office a complete, updated copy of a management plan for each of the three (3) schools under its administrative control or direction, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, constitutes three (3) separate and distinct violations of 40 C.F.R. § 763.93(g)(1) and (g)(2) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$14,308 for each day during which each violation continues.

Count 7 to 9 – Failure to Maintain an Updated Copy of the Management Plan In Each School's Administrative Office

42. Paragraphs 1 through 33 are incorporated by reference as if set forth in full herein.

43. 40 C.F.R. § 763.93(g)(3) requires each school under a Local Educational Agency's authority to maintain in its administrative office a complete, updated copy of the asbestos management plan for that school; to make the asbestos management plans available, without cost or restriction, to workers before work begins in any area of a school building; and to make the asbestos management plan available, without cost or restriction, for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, within 5 working days after receiving a request for inspection.

44. Between in or about 2020 and in or about 2023, Respondent failed to maintain in the administrative office of each of the three (3) schools under its authority, referenced in paragraph 26 and identified in Table 1, above, a complete, updated copy of a management plan for that school, and failed to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, in violation of 40 C.F.R. § 763.93(g)(3).

45. Respondent's failure to maintain in the administrative office of each of its three (3) schools a complete, updated copy of the management plan for that school, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, constitutes three (3) separate and distinct violations of 40 C.F.R. § 763.93(g)(3) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$14,308 for each day during which each violation continues.

Count 10 to 12 – Failure to Notify Organizations of Availability of Management Plans

46. Paragraphs 1 through 33 are incorporated by reference as if set forth in full herein.

47. 40 C.F.R. § 763.93(g)(4) requires at least once each school year the Local Education

Agency to notify in writing parents, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups, and a dated copy of the notification.

48. Between in or about 2020 and in or about 2023, Respondent failed to notify in writing the parents, teacher, and employee organizations of the availability of management plans at least once a school year, and include in the management plan for each of the three (3) school buildings a description of the steps taken to notify such organizations, and a dated copy of the notification.

49. Respondent's failure to notify in writing the parents, teacher, and employee organizations of the availability of management plans at least once a school year, and include in the management plan for each of the three (3) school buildings a description of the steps taken to notify such organizations, and a dated copy of the notification, constitutes three (3) separate and distinct violations of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$14,308 for each day during which each violation continues.

Civil Penalty

50. Pursuant to Section 16(a) of TSCA and Section 207 of TSCA-AHERA, 15 U.S.C. §§ 2615(a) and 2647, Complainant determined that an appropriate civil penalty to settle this action is \$13,228. In determining the penalty amount, Complainant considered the significance of the violation; the culpability of the violator, including any history of previous violations under this chapter; the ability of the violator to pay the penalty; and the ability of the violator to continue to provide educational services to the community. Complainant also considered EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act*. In addition, Section 207 of TSCA-AHERA

provides that the court shall order that any civil penalty collected be used by the local educational agency for purposes of complying with this subchapter, and any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by 20 U.S.C. § 4022.

51. Respondent has represented and provided proof that it has spent more than \$13,228 to achieve compliance with TSCA-AHERA and its regulations. In consideration of the expenditures which Respondent has made to achieve compliance, Complainant reduced the penalty by the full amount of these expenditures, resulting in a penalty of zero dollars (\$0).

General Provisions

52. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gustafson.robert@epa.gov (for Complainant), and buyarskid@gomaroons.org (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

53. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

54. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

55. This CAFO does not affect Respondent's responsibility to comply with TSCA-AHERA and other applicable federal, state and local laws.

56. Respondent certifies that it is complying fully with TSCA-AHERA and the Asbestos-Containing Materials in Schools Rule.

57. The terms of this CAFO bind Respondent, its successors and assigns.

58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorneys' fees, in this action.

60. This CAFO constitutes the entire agreement between the parties.

In the Matter of Menominee Area Public Schools
Docket No.: TSCA-05-2026-0013

Menominee Area Public Schools, Respondent

1-8-26

Date

Drew Buyarski

Drew Buyarski
Superintendent

Menominee Area Public Schools

In the Matter of Menominee Area Public Schools
Docket No.: TSCA-05-2026-0013

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 5

In the Matter of Menominee Area Public Schools
Docket No.: TSCA-05-2026-0013

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5