



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 1**  
**5 Post Office Square, Suite 100**  
**Boston, Massachusetts 02109-3912**

Received by  
EPA Region 1  
Hearing Clerk

**CONSENT AGREEMENT AND FINAL ORDER PURSUANT TO TOXIC SUBSTANCES CONTROL ACT**

**In the Matter of the Town of Southington, CT**  
**DOCKET NO: TSCA-01-2023-0004**

---

This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency Region 1 ("EPA") and the Town of Southington, Connecticut ("Respondent"), pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.13(b) and 22.18(b) and (c). The CAFO resolves EPA's existing civil penalty claims arising from the presence of polychlorinated biphenyls ("PCBs") in vapor barriers between walls at Respondent's Kennedy and DePaulo Middle Schools (the "Schools"); contains conditions of settlement pursuant to TSCA Section 16(a)(2)(c), 15 U.S.C. § 2615(a)(2)(c), to ensure that Respondent continues to safely manage such PCBs until they can be removed; and sets a compliance schedule for removing the PCBs. To date, Respondent has been managing the PCBs pursuant to an approval that EPA issued on April 17, 2013 and will continue periodic air monitoring and other safe management practices under this CAFO.

**EPA's ALLEGED VIOLATIONS**

*Governing Law and Regulations:* EPA alleges that Respondent is in violation of Section 15 of TSCA, 15 U.S.C. § 2614; and the federal regulations at 40 C.F.R. Part 761, for continuing to use construction materials at the Schools containing PCBs at or above 50 parts per million ("ppm"), which exceeds the allowable PCB level for the use of such materials. Section 6(e)(2)(A) of TSCA, 15 U.S.C. § 2605(e)(2)(A), prohibits, among other things, the use of PCBs in any manner other than in a totally enclosed manner, except as authorized by EPA. TSCA Section 6(e) authorizes EPA to regulate PCBs. Accordingly, EPA promulgated regulations to establish prohibitions of, and requirements for, among other things, the use of PCBs and PCB items ("the PCB Regulations"). 40 C.F.R. § 761.1(a). Pursuant to 40 C.F.R. § 761.20(a), "no persons may use any PCB, or any PCB Item, regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30," subject to exclusions set forth in 40 C.F.R. § 761.20(a)(1)-(4). The term "totally enclosed manner" is defined in 40 C.F.R. § 761.3, and § 761.20 contains a list of activities and uses that are considered to be totally enclosed. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA or any rule (such as the PCB Regulations) promulgated under that section. Further, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), EPA may both assess civil penalties for violations of Section

15 of TSCA and compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed.

*EPA's Alleged Violations:* Respondent owns and operates the John F. Kennedy Middle School at 1701 South Main Street, and the Joseph A. DePaulo Middle School at 385 Pleasant St. in Southington, Connecticut (together, the "Schools"). Respondent is a "person" as that term is defined at 40 C.F.R. § 761.3, subject to the prohibitions and requirements of TSCA and the PCB Regulations. Since before 1978, Respondent has used construction materials at the Schools that contain PCBs at or above 50 parts per million ("ppm"), which exceeds the allowable PCB level for the use of such materials. The continued presence of the PCBs at or above 50 ppm in the vapor barrier and mastic between the walls of the Schools is not authorized under any of the PCB use authorizations listed in 40 C.F.R. § 761.30 and is not excluded from regulation under any provision of 40 C.F.R. § 761.20(a)(1)-(4). In 2013, EPA issued an approval for Respondent to manage these PCBs in place, which required among other things, periodic air monitoring. Years of air sampling results have not indicated levels of concern. Nonetheless, Respondent is in violation of 40 C.F.R. § 761.20(a) and TSCA Section 6. Due to a five-year statute of limitations, this CAFO alleges violations of TSCA and the PCB regulations from September 2017 through the effective date of this CAFO.

#### **SETTLEMENT TERMS**

***Civil Penalty:*** Pursuant to the statutory penalty factors in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), the applicable penalty policy, EPA's authority under 15 U.S.C. § 2615(a)(2)(C) to compromise TSCA penalties and impose conditions of settlement, and Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, EPA has determined that it is fair and proper not to assess a civil penalty for the violations alleged in this matter. EPA Headquarters has concurred in this decision under the facts of this case. However, below and in Attachment A, this CAFO imposes non-penalty conditions for the safe management of PCBs that, if violated, may result in the imposition of stipulated penalties in the amount of \$500 per day of violation, and interest calculated pursuant to 31 C.F.R. § 901.9(b)(2) for late payment of such penalties. Respondent agrees to pay such stipulated penalties and interest, if demanded by EPA, according to instructions that EPA will send at the time of any demand. Before demanding any stipulated penalties, EPA will endeavor to first provide Respondent advance notification and an opportunity to cure the violation, provided the violation is not a repeat violation within the last five years.

#### ***Non-Penalty Conditions Requiring Safe Management of PCBs***

As further set out in Appendix A, Respondent agrees to maintain the vapor barriers in a safe manner, test the indoor air for the presence of PCBs, inform EPA and the Southington Schools' Director of Operations about such test results, and, by December 31, 2042, remove the PCBs and any other materials contaminated by the PCBs in accordance with the requirements of 40 C.F.R. Part 761. Conditions that may result in changes to the 2042 deadline are specified in paragraph 8 of Attachment A. The terms of this CAFO may be modified only by written agreement of the parties, and as specified in Attachment A.

**Other Settlement Provisions:**

For the purpose of this proceeding, Respondent (1) agrees that this CAFO states claims upon which relief may be granted against Respondent and that EPA has jurisdiction over the subject matter alleged in this CAFO; (2) neither admits nor denies the factual allegations in this CAFO; (3) consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in the CAFO; (4) waives any right to contest the allegations in this CAFO; (5) waives its rights to appeal the accompanying Final Order; (6) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have in this proceeding with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under TSCA; (7) consents to personal jurisdiction in any action to enforce this CAFO, in the United States District Court for the District of Connecticut; (8) waives any rights it may possess to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; (9) agrees that each party to this action shall bear its own costs and fees, if any; (10) consents to the use of digital signatures on this document; to the electronic filing of this CAFO; to receipt of service of the CAFO, once filed, by electronic mail; and the disclosure of e-mail addresses used for serving this CAFO to the public when the CAFO and Certificate of Service are filed and uploaded to a searchable database; and (11) attests that its undersigned representative is fully authorized to bind Respondent to this CAFO.

Upon Respondent's submission of the signed original CAFO, EPA will take no further civil penalty action against Respondent for the violations alleged above. Nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, or to address any conditions which may present an imminent and substantial endangerment to public health or the environment. This CAFO shall resolve only civil penalties for the violations alleged herein (i.e., the violations up to the effective date of this CAFO), and it does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA or any other statute.

This CAFO is binding on the parties signing below.

This CAFO is effective upon filing with the Regional Hearing Clerk.

**FOR RESPONDENT:**

By:  \_\_\_\_\_

Date: 10/25/2022

Name (print): Mark Sciota \_\_\_\_\_

Title (print): Town Manager \_\_\_\_\_

**FOR COMPLAINANT EPA:**

By: \_\_\_\_\_  
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 1

Date: \_\_\_\_\_

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and (c) of EPA's *Consolidated Rules of Practice*, and Section 16(a) of TSCA, 15 U.S.C. § 2615(a), the attached Consent Agreement and Final Order resolving this matter is hereby ratified and incorporated by reference into this Final Order.

In accordance with 40 C.F.R. § 22.31(b), this Final Order is effective on the date it is filed with the Regional Hearing Clerk.

IT IS SO ORDERED:

\_\_\_\_\_ Date: \_\_\_\_\_

LeAnn Jensen  
Regional Judicial Officer  
U.S. EPA Region 1