

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

In the Matter of:

Respondent
The Key School, Inc.
534 Hillsmere Drive
Annapolis, MD 21403

Facility
The Key School
534 Hillsmere Drive
Annapolis, MD 21403

RESPONDENTS

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. TSCA-3-2009-0024

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 20, 2009, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2009-0024) 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 February 20, 2009, a true and correct copy of the Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2009-0024) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

Niels Holch, President
The Key School
Board of Trustees
534 Hillsmere Drive
Annapolis, MD 21403

Ken Piel, Director
Finance and Operations
The Key School
534 Hillsmere Drive
Annapolis, MD 21403

Marcella Yedid, Headmaster
The Key School
534 Hillsmere Drive
Annapolis, Md 21403

Date: 2/20/09

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

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CONSENT AGREEMENT

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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 the Toxic Substances Control Act ("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 The Key School, Inc. This CA includes the assessment of a civil penalty against The Key School, Inc. ("Respondent"), because it is a local education agency liable for violations which occurred at The Key School, 534 Hillsmere Drive, Annapolis, MD (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 the 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 FIVE THOUSAND FIFTEEN (\$ 5,015.00) dollars since the Maryland Department of the Environment's ("MDE") December 4, 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, The Key School, Inc., 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 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, The Key School, located at 534 Hillsmere Drive, Annapolis, MD 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. § 763.93(a)(2) requires that if a building to be used as part of a school is leased or otherwise acquired after October 12, 1988, the local education agency shall include the new building in the management plan for the school prior to its use as a school building, and submit the revised portions of the management plan to the Agency designated by the Governor.
19. During the December 4, 2007 inspection of The Key School, the MDE found that several buildings used for instruction, including the Arts, Bookstore, Maintenance, Manse

Addition, Multipurpose and the Science and Library buildings, had not been included in the management plan as required by 40 C.F.R. § 763.93(a)(2).

20. By failing to include the buildings in the management plan prior to their use as school buildings, Respondent violated the requirements of 40 C.F.R. 763.93(a)(2) and Section 207(a)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

COUNT II

21. The allegations contained in Paragraphs 1 through 20 are incorporated herein by reference.
22. 40 C.F.R. § 763.93(e)(4) requires that LEAs shall include in the management plan the name, address, and telephone number of the person designated under § 763.84 to ensure that the duties of the local education agency are carried out, and the course name, and dates and hours of training taken by that person to carry out the duties.
23. During the December 4, 2007 inspection, the MDE found that the Key School, Inc. had not maintained in the management plan records of the training taken by the designated person to perform the required duties.
24. By failing to maintain records of training taken by the designated person in the management plan, Respondent violated the requirements of 40 C.F.R. 763.93(e)(4) and Section 207(c)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

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 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 FOUR THOUSAND EIGHT HUNDRED TWENTY THREE (\$ 4,823.00) dollars 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 AHERA, 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 FIVE THOUSAND FIFTEEN (\$ 5,015.00) since the MDE's December 4, 2007 inspection to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of the FOUR THOUSAND EIGHT HUNDRED TWENTY THREE (\$ 4,823.00) dollar civil penalty assessed against the Respondent.
28. Respondent consents to the assessment of a FOUR THOUSAND EIGHT HUNDRED

TWENTY THREE (\$ 4,823.00) dollar civil penalty with a cash component of ZERO (\$ 0) dollars.

V. Reservation of Rights

29. 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

30. 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:

1/23/09
Date

Niels Holch
Niels Holch, President
The Key School
Board of Trustees

For Complainant:

1/28/09
Date

Magda Rodriguez-Hunt
Magda Rodríguez-Hunt
Enforcement Officer

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

2/12/09
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF REGIONAL OPERATIONS
ENVIRONMENTAL PHILADELPHIA

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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 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 FOUR THOUSAND EIGHT HUNDRED TWENTY THREE (\$ 4,823.00) dollars, but that the cash component of that civil penalty will be ZERO (\$ 0) dollars.



In accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), the FOUR THOUSAND EIGHT HUNDRED TWENTY THREE (\$ 4,823.00) dollar 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.

2/20/09
Date


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

