

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 12 11 2: 11

IN RE:

Calvert Hall College  
8102 La Salle Road  
Baltimore, MD 21286

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:  
: Docket No: TSCA-03-2009-0040  
:  
:

Consent Agreement

**Respondent**

**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 (“Complainant”) and Calvert Hall College (“Respondent”). This CA includes the assessment of a civil penalty against Respondent, because it is a local education agency liable for violations which occurred at Calvert Hall College High School, located at 8102 La Salle Road, in Baltimore, MD 21286 (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 AHERA and the federal regulations

implementing 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 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 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 twenty two thousand nine hundred forty dollars (\$22,940) since the Maryland Department of the Environment's ("MDE") July 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 and the federal regulations implementing 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 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 AHERA.
15. The Facility 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.

#### COUNT I

16. The allegations contained in Paragraphs 1 through 15 are incorporated herein by reference.
17. During a July 24, 2007 inspection, the MDE inspector interviewed the school's Director of Facilities, and discovered that the LEA had failed to include in the management plan, building additions to the Calvert Hall College High School , and add-ons to the main school building as follows: 1). George Young Hall, built in 2003; 2). Paul Russo Stadium, built in 1999; and 3). Caspino Baseball Stadium, built in 2008; and 4). the Knott Arts Building for the presence of ACBM.
18. 40 C.F.R. § 763.93(a)(2) requires that LEAs include in the management plan, prior to their use as a school building, new building(s), in the management plan for the school, prior to their use as a school building.
19. The LEA shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable asbestos containing

building materials (ACBM), unless excluded under 40 C.F.R. § 763.99(a).

20. Pursuant to 40 C.F.R. § 763.99(a)(7), LEAs are not required to perform inspections under 40 C.F.R. § 763.85(a) if 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 school building.
21. Inspections conducted by MDE on July 24, 2007 found that Calvert Hall College did not have any records showing that it had included in the management plan, the George Young Hall, Knott Fine Arts Center, Paul Russo Stadium, or Crispino Baseball Stadium, for the location of any ACBM, nor did it have any signed statements certifying that no ACBM was specified or used as a building material in those school buildings.
22. Respondent's failure to include in its management plan the George Young Hall, Knott Fine Arts Center, Paul Russo Stadium, and Crispino Baseball Stadium for ACBM, and its inability to produce signed statements certifying that ACBM was not specified or used at any of these four school buildings, is a violation of 40 C.F.R. § 763.93(a)(2) and Section 207(a)(1) of TSCA, 15 U.S.C. §2647(a)(1).
23. On February 10, 2009 and on March 5, 2009 the LEA submitted statements from Gaudreau, Inc., and The Mullan Contracting Company architect contractor certifications that no ACBM was specified or used during the construction of the four additions to the Calvert Hall High School main building.

#### **IV. Settlement Recitation**

24. 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 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 eight thousand seven hundred and sixty eight dollars (\$8,768) is appropriate.
25. 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.
26. Respondent certifies that it has spent twenty two thousand nine hundred forty dollars (\$22,940) since MDE's July 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 the eight thousand seven hundred and sixty eight dollars (\$8,768) of the civil penalty assessed against the Respondent.

Respondent consents to the assessment of an eight thousand seven hundred and sixty eight dollars (\$8,768) civil penalty with a cash component of (\$0) zero dollars.

#### **V. Reservation of Rights**

27. 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 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**

28. 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.

#### **VII. Execution**

29. 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.

**Respondent:**

4/24/09  
Date

Benedict Oliver, Jr.  
Mr. Benedict Oliver, Chief Executive  
Calvert Hall College

**For Complainant:**

5/7/09  
Date

Carolyn Bernota  
Carolyn Bernota, Enforcement Officer

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

5/8/2009  
Date

Abraham Ferdas AF  
Abraham Ferdas, Director  
Land and Chemicals Division



