

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

In The Matter of:

Ridley School District
901 Morton Avenue
Folsom, PA 19033

Respondent

:
:
:
:
:
:
:
:
:
:
:
:

Docket No: TSCA-03-2016-0080

CONSENT AGREEMENT

REGIONAL HEADQUARTERS
EPA REGION III PHILADELPHIA, PA

2016 SEP 29 AM 10:49

RECEIVED

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 the Ridley School District (“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 Woodlyn Elementary School (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 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 Facilities are 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 eleven thousand eight hundred eighty one dollars (\$11,881) since EPA's August 22, 2013 inspection for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with Section 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, Ridley School District, 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 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.

15. The Facilities, two Woodlyn Elementary School buildings, located at 1200 Colson Road, Woodlyn, Pennsylvania are 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 Facilities are each 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. 40 C.F.R. § 763.93(d), provides, *inter alia*, that each LEA shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan under this section shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date.
19. EPA has evidence that on or about August 25, 1995, Respondent had completed management plans for eleven (11) school buildings within their LEA.
20. The inspection conducted by EPA on August 22, 2013 found that Ridley School District did not maintain management plans for the schools at the LEA office and Woodlyn Elementary School did not maintain a management plan.

21. By failing to maintain and update the management plan, Respondent violated the requirements of 40 C.F.R. § 763.93(d).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. 40 C.F.R. § 763.93(g)(4), provides, *inter alia*, that at least once each school year, the LEA notify in writing parent, teacher, and employee organizations of the availability of management plans and include in the management plans a description of the steps taken to notify such organizations, and a dated copy of the notification.
24. The inspection conducted by EPA on August 22, 2013 found that Ridley School District failed to provide initial or annual notifications in writing to parents, teachers, and employee organizations of the availability of the management plan.
25. By failing to send annual notifications to parents, teachers, and employee organizations about the availability of the LEA's management plan, for the time period of October 21, 1988 to August 22, 2013, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4).

COUNT III

26. The allegations contained in Paragraphs 1 through 25 are incorporated herein by reference.
27. 40 C.F.R. § 763.85(b), provides, *inter alia*, that at least once every three years after a management plan is in effect, each LEA shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building.

28. The inspection conducted by EPA on August 22, 2013 found that Ridley School District had not performed reinspections in their school buildings for the time period of October 21, 2009 to August 22, 2013.
29. By failing to perform reinspections every three years Respondent violated the requirements of 40 C.F.R. § 763.85(b).

COUNT IV

30. The allegations contained in Paragraphs 1 through 29 are incorporated herein by reference.
31. 40 C.F.R. § 763.92(b)(1), provides, *inter alia*, that the LEA shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM, at least once every 6 months after a management plan is in effect.
32. The inspection conducted by EPA on August 22, 2013 found that Ridley School District had no records of periodic surveillance in any of its school buildings since December 19, 2006.
33. By failing to conduct periodic surveillance, for the time period of December 19, 2006 to August 22, 2013, Respondent violated the requirements of 40 C.F.R. § 763.92(b)(1).

COUNT V

34. The allegations contained in Paragraphs 1 through 33 are incorporated herein by reference.
35. 40 C.F.R. § 763.84(g)(2), provides, *inter alia*, that the designated person receives adequate training to perform duties assigned. Such training shall provide, as necessary,

basic knowledge of: (i) Health effects of asbestos. (ii) Detection, identification, and assessment of ACM. (iii) Options for controlling ACBM. (iv) Asbestos management programs. (v) Relevant Federal and State regulations concerning asbestos, including those in this subpart E and those of the Occupational Safety and Health Administration, U.S. Department of Transportation and the U.S. Environmental Protection Agency.

36. The inspection conducted by EPA on August 22, 2013 found that Ridley School District had not adequately trained a designated person to perform duties assigned.
37. By failing to train a designated person, Respondent violated the requirements of 40 C.F.R. § 763.84(g)(2).

COUNT VI

38. The allegations contained in Paragraphs 1 through 37 are incorporated herein by reference.
39. 40 C.F.R. § 763.92(a)(1), provides, *inter alia*, that all members of the LEA's maintenance and custodial staff who may work in a building that contains ACBM receive awareness training of at least two hours, whether or not they are required to work with ACBM.
40. The inspection conducted by EPA on August 22, 2013 found that Ridley School District failed to ensure that all members of its maintenance and custodial staff who may work in a building that contains ACBM received at least 2 hours of awareness training.
41. By failing to provide two-hour awareness training to all maintenance and custodial staff who may work in a building that contains ACBM, for the time period of at least August 25, 1995 to August 22, 2013, Respondent violated the requirements of 40 C.F.R. § 763.92(a)(1).

IV. Settlement Recitation

42. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that the Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for violations of TSCA. 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 twelve thousand seven hundred fifty dollars (\$12,750) is appropriate.
43. The aforesaid 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.
44. Respondent certifies that it has spent eleven thousand eight hundred and eighty one dollars (\$11,881) since EPA's August 22, 2013 inspection to comply with Subchapter II of TSCA. Therefore, pursuant to Section 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 eleven thousand eight hundred and eighty one dollars (\$11,881) of the civil penalty assessed against Respondent.

45. Respondent consents to the assessment of twelve thousand seven hundred fifty dollars (\$12,750) civil penalty with a cash component of eight hundred sixty-nine dollars (\$869), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not seek to recover interest on any amount of the penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue.
46. Payment of the civil penalty amount required under the terms of Paragraph 45, above, shall be made as follows:

- a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

314-418-1028

c. All payment made by check in any currency drawn on banks with no USA

branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read “D
68010727 Environmental Protection Agency”)

e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

Physical location of US Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

47. All payments shall also reference the above case caption and docket number, TSCA-03-2016-0080.

48. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to:

Lydia A. Guy, Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Christine Convery (3LC62)
Land and Chemicals Division
U.S. EPA, Region III, 1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

V. Reservation of Rights

49. 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

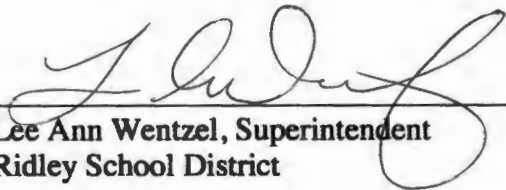
jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. Effective Date

50. 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.

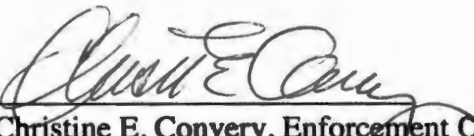
For Respondent:

9/1/16
Date


Lee Ann Wentzel, Superintendent
Ridley School District

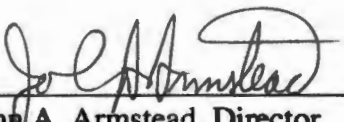
For Complainant:

9/26/16
Date


Christine E. Convery, Enforcement Officer
Pesticides and Asbestos Programs Branch

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

9.27.16
Date


John A. Armstead, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

**Ridley School District
901 Morton Avenue
Folsom, PA 19033**

Respondent

EPA Docket No.: TSCA-03-2016-0080

FINAL ORDER

**Proceeding under Sections 16 and 207 of
the Toxic Substances Control Act,
15 U.S.C. § 2615 and 2647(a)**

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Ridley School District have executed a document entitled “Consent Agreement”, which I hereby ratify as a Consent Agreement in accordance with 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 Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

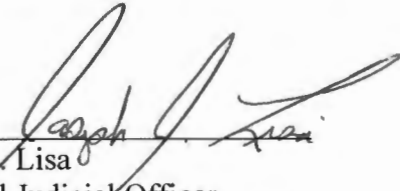
Based upon the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s January 1989 *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)* and the statutory factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c).

NOW, THEREFORE, 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, **IT IS HEREBY ORDERED** that Respondent is assessed a civil penalty of twelve thousand seven hundred fifty dollars (\$12,750.00) but that the cash component of that civil penalty will be eight hundred sixty-nine dollars (\$869.00). In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), eleven thousand eight hundred eighty-one dollars (\$11,881.00) of the civil penalty assessed against the Respondent is hereby remitted.

The effective date of the Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 28, 2016
Date



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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

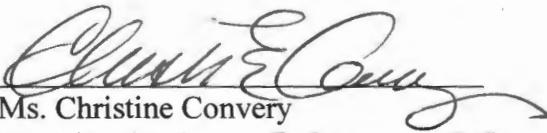
IN RE:	:	
	:	
	:	Docket No. TSCA-03-2016-0080
Ridley School District	:	
901 Morton Avenue	:	
Folsom, PA 19033	:	
	:	
	:	Consent Agreement and
	:	Final Order
Respondent	:	

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 Certified U.S. Mail upon the following person:


Ms. Lee Ann Wentzel
Superintendent
Ridley School District
901 Morton Avenue
Folsom, PA 19033

Date: 9/29/16

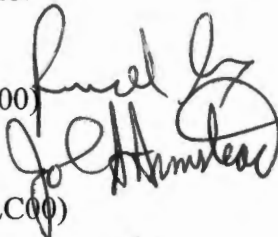

Ms. Christine Convery
Pesticides/ Asbestos Enforcement Officer
U.S. EPA - Region III

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


Subject: Toxic Substances Control Act
Ridley School District
Docket No. TSCA-03-2016-0080
Consent Agreement and Final Order

From:  Mary Coe, Regional Counsel
Office of Regional Counsel (3RC00)

John A. Armstead, Director
Land and Chemicals Division (3LC00)

 9/12/16
9.27.16

To: Joseph J. Lisa, Regional Judicial Officer
Office of Regional Counsel (3RC00)

 9-28-2016

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 the Ridley School District. A civil penalty of twelve thousand seven hundred fifty dollars (\$12,750.00) with a cash component of eight hundred sixty-nine dollars (\$869.00) has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA’s “Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)”, dated January 31, 1989, as supplemented by the “Gravity Based Penalty Matrices for Violations, which occur January 30, 1997, for the AHERA Interim Final ERP” effective January 30, 1997, 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)”, and EPA’s June 5, 2006 “Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule”.

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. Following EPA’s August 2013 inspection, the LEA in this case documented costs spent to comply with AHERA of eleven thousand eight hundred eighty-one dollars (\$11,881.00) and, therefore, the cash component of the assessed civil penalty is eight hundred sixty-nine dollars (\$869.00). This is consistent with the “Assessing Administrative Civil Penalties Against an LEA” section of the 1989 Interim Final Enforcement Response Policy for AHERA.

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).

Attachments

cc: Ms. Lee Ann Wentzel, Superintendent
Ridley School District
901 Morton Avenue
Folsom, PA 19033
lwentzel@ridleysd.org