

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE FILLED OUT BY ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Carolyn Bernota  
Name of Contact person

11/30/2009  
Date

in the Pesticides and Asbestos Programs Branch (3LC32)  
Office

at 215-814-2169  
Phone number

Non-SF Jud. Order/Consent  
Decree. DOJ COLLECTS

Administrative Order/  
Consent Agreement.  
FMD COLLECTS PAYMENT

SF Jud. Order/Consent  
Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment

Mr. Joel Martin, Chief Executive

The Total Dollar Amount of Receivable \$1,587,168.00  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2010-0038

The Site-Specific Superfund Acct. Number N/A

The Designated Regional/HQ Program Office Pesticides and Asbestos Programs Branch (3LC62)

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
Name of Contact Date

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

- Robert Smolski
- Originating Office (ORC)
- Designated Program Office

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to: Lori Weiner**

- Originating Office
- Designated Program Office
- Regional Hearing Clerk
- Regional Counsel

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

IN RE:

Conococheague Mennonite Church : Docket No.: TSCA-03-2010-0038  
12403 Huyett Lane :  
Hagerstown, Maryland 21740 :  
: 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 Conococheague Mennonite Church ("CMC") ("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 Hagerstown Mennonite School, located at 12403 Huyett Lane, in Hagerstown, Maryland 21740 (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. 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**

12. 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.
13. 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.

14. 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 1

15. The allegations contained in Paragraphs 1 through 14 are incorporated herein by reference.
16. During the inspection, the MDE inspector interviewed the school's Chairman, and discovered that the LEA had failed to conduct reinspections at the Hagerstown Mennonite School building for the presence, or condition of ACBM.
17. 40 C.F.R. § 763.85(b) requires at least once every 3 years when a management plan is in effect, that LEAs reinspect 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).
18. Inspections conducted by MDE on March 26, 2008 found that CMC did not have any records showing that it had conducted reinspections of the Mennonite School, for the location, or condition of any ACBM, nor did it have any signed statements certifying that no ACBM was specified or used as a building material in the school building.
19. Respondent's failure to reinspect the School for ACBM, and its inability to produce signed statements certifying that ACBM was not specified or used at any part of the school building, is a violation of 40 C.F.R. § 763.85(b) and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

## COUNT II

20. The allegations contained in Paragraphs 1 through 19 are incorporated herein by reference.
21. 40 C.F.R. § 763.93(g)(4) states, in pertinent part, that: "...at least once each school year, the [LEA] shall notify in writing parent, 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."
22. During the March 26, 2008 inspection, the MDE inspector found that the Respondent failed to provide, at least once each school year, written notification, of the availability of the Facilities management plan, to parent, teacher, and employee organizations and to include in the management plan a description of the steps taken to notify each such organization, and a dated copy of each such notification.
23. By failing to provide the annual written notifications, Respondent violated 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

### **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 one thousand six hundred eighty dollars (\$1,680) 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 consents to the assessment of a one thousand six hundred eighty (\$1,680) dollar civil penalty.
27. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the civil penalty as follows:
  - a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashiers 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  
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashiers 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”), also known as Remittance Express (REX), 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

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: John Schmid 202-874-7026  
or 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.

All payments shall also reference the above case caption and docket number, TSCA-03-2010-0038. 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 to Carolyn Bernota, PAPEB Case Development Officer (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late

payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).]

#### **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 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**

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.

#### **VII. Execution**

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:**

11-23-2009  
Date

Joel Martin  
Mr. Joel Martin, Chief Executive  
Cononocoheague Mennonite Church

**For Complainant:**

11/30/2009  
Date

Carolyn Bernota  
Carolyn Bernota, Enforcement Officer

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

12/18/09  
Date

Abraham Ferdas  
Abraham Ferdas, Director  
Land and Chemicals Division

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

IN RE:

Conococheague Mennonite Church  
12403 Huyett Lane  
Hagerstown, Maryland 21740

: Docket No.: TSCA-03-2010-0038  
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**Respondent**

**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 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, Respondent is assessed a civil penalty of one thousand six hundred eighty dollars (\$1,680). The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

12/22/09  
Date

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