

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

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REGIONAL ADMINISTRATIVE CENTER
EPA REGION III OFFICE

In The Matter of: :
: :
Arlington Baptist Church, Inc. : Docket No: TSCA-03-2015-0071
3030 North Rolling Road : :
Baltimore, MD 21224 : :
: :
Respondent : :
: :
: :

CONSENT AGREEMENT

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 Arlington Baptist Church, Inc. (“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 Arlington Baptist 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 six hundred ten dollars (\$11,610) since Maryland Department of the Environment's (MDE) April 23, 2012 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, Arlington Baptist Church, Inc., 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 any nonpublic, non-profit elementary, or secondary school building, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

15. The Facilities, two Arlington Baptist School buildings, located at 3030 North Rolling Road, Baltimore, Maryland 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. § 763.85(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.
19. On October 21, 1988 Arlington Baptist Church, Inc. completed their management plan.
20. The inspection conducted by MDE on April 23, 2012 found that Arlington Baptist Church, Inc. had not performed reinspections in their school buildings for the time period of October 21, 1988 to April 23, 2012.
21. By failing to perform reinspections every three years Respondent violated the requirements of 40 C.F.R. § 763.85(b).

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), requires, *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 MDE on April 23, 2012 found that Arlington Baptist Church, Inc. did not have copies of annual notifications, and therefore no record of ever notifying in writing 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 April 23, 2012, 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. § 763.92(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.
28. The inspection conducted by MDE on April 23, 2012 found that Arlington Baptist Church, Inc. did not conduct any periodic surveillance in its school buildings since its management plan was in effect on October 21, 1988.
29. By failing to conduct periodic surveillance, for the time period of October 21, 1988 to April 23, 2012, Respondent violated the requirements of 40 C.F.R. § 763.92(b)(1).

COUNT IV

30. The allegations contained in Paragraphs 1 through 29 are incorporated herein by reference.
31. 40 C.F.R. § 763.84(d), provides, *inter alia*, that all short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come into contact with asbestos in a school are provided information regarding the location(s) of ACBM and suspected ACBM assumed to be ACM.
32. The inspection conducted by MDE on April 23, 2012 found that Arlington Baptist Church, Inc. did not have records documenting that short-term workers have ever been notified of the locations of ACBM and suspected ACBM assumed to be ACM in its school buildings.
33. By failing to provide short-term workers with information regarding locations of ACBM, for the time period of October 21, 1988 to April 23, 2012, Respondent violated the requirements of 40 C.F.R. § 763.84(d).

COUNT V

34. The allegations contained in Paragraphs 1 through 33 are incorporated herein by reference.
35. 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.
36. The inspection conducted by MDE on April 23, 2012 found that Arlington Baptist Church, Inc. did not have records demonstrating that two-hour awareness training has ever been provided to all maintenance and custodial staff.

37. 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 October 21, 1988 to April 23, 2012, Respondent violated the requirements of 40 C.F.R. § 763.92(a)(1).

COUNT VI

38. The allegations contained in Paragraphs 1 through 37 are incorporated herein by reference.
39. 40 C.F.R. § 763.84(g)(1), provides, *inter alia*, that each LEA shall designate a person to ensure that requirements under 40 C.F.R. § 763 Subpart E are properly implemented.
40. The inspection conducted by MDE on April 23, 2012 found that Arlington Baptist Church, Inc. failed to designate a person to ensure that requirements under 40 C.F.R. § 763 Subpart E are properly implemented.
41. By failing to designate a person, Respondent violated the requirements of 40 C.F.R. § 763.84(g)(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 six hundred ten dollars (\$11,610) since MDE's April 23, 2012 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 six hundred ten dollars (\$11,610) 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 one thousand one hundred forty dollars (\$1,140), 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 48, 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
Eric Volck 513-487-2105

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

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:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

47. All payments shall also reference the above case caption and docket number, TSCA-03-2015-0071.

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:

2/11/2015
Date


Dr. Mark Campbell, President
Arlington Baptist School

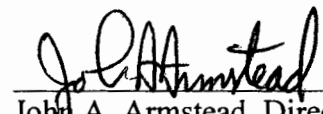
For Complainant:

3/24/15
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.

5.6.15
Date


John A. Armstead, Director
Land and Chemicals Division

11/11/11

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

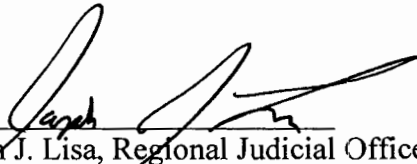
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Arlington Baptist Church, Inc. : Docket No: TSCA-03-2015-0071
3030 N. Rolling Road :
Baltimore, MD 21224 :
: CONSENT AGREEMENT
: :
Respondent :

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 one hundred forty dollars (\$1,140). The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

June 30, 2015
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:

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Docket No. TSCA-03-2015-0071

Arlington Baptist Church, Inc.
3030 North Rolling Road
Balitmore, MD 21224

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Consent Agreement and
Final Order

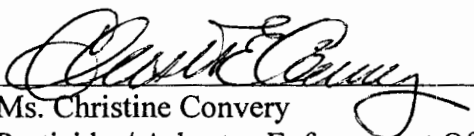
Respondent

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:

Dr. Mark Campbell
President
Arlington Baptist School
3030 N. Rolling Road
Baltimore, MD 21224

Date: 0/30/15


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

