



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

VIA OVERNIGHT MAIL

MAR 23 2009

Steven Cochran, Pastor
Hereford United Methodist Church
16391 York Road
Monkton, MD 21111

Re: Two by Two Preschool
Docket No. TSCA-03-2009-0096

Dear Mr. Holch:

Enclosed, please find a copy of the final Consent Agreement ("CA") and Final Order (collectively "CAFO") resolving Docket number: TSCA-03-2009-0096.

The CAFO was signed by the Regional Judicial Officer on March 19, 2009 and filed with the Regional Hearing Clerk on March 23, 2009. This case is now considered resolved.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (215) 814-2128.

Sincerely,

A handwritten signature in black ink that reads "Magda Rodriguez-Hunt".

Magda Rodriguez-Hunt
Enforcement Officer

Enclosure

cc: Barbara Schroyer, Director
Two by Two Preschool

Lorraine Anderson, MDE

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 SEVEN THOUSAND ONE HUNDRED FORTY SIX DOLLARS (\$ 7,146.00) since the December 14, 2006 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, Hereford United Methodist Church, 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 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 TSCA AHERA.
15. The Facility, Two by Two Preschool, located at 16391 York Road, Monkton, MD 21111 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)(3) states that if a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school.
19. During the December 14, 2006 inspection of Two by Two Preschool, the duly authorized inspector found that Two by Two Preschool had operated since on or about 2000, however, Respondent failed to prepare and submit a management plan as required by 40 C.F.R. § 763.93(a)(3).

20. By failing to submit a management plan, Respondent violated the requirements of 40 C.F.R § 763.93(a)(3) 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. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.
23. During the December 14, 2006 inspection of the Facility, the inspector found that the Facility had operated since on or about 2000, however, Respondent failed to conduct a reinspection at least once every three years as required by 40 C.F.R. § 763.85(b)(1).
24. By failing to conduct a reinspection at least every 3 years, Respondent violated the requirements of 40 C.F.R § 763.85(b)(1) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1).

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 FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$ 5,525.00) 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 SEVEN THOUSAND ONE HUNDRED FORTY SIX DOLLARS (\$ 7,146.00) since the December 14, 2006 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 FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$5,525.00) of the civil penalty assessed against the Respondent.
28. Respondent consents to the assessment of a FIVE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLAR (\$ 5,525.00) civil penalty with a cash component of ZERO DOLLARS (\$ 0).

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:

2/19/09
Date


Steven Cochran, Pastor
Hereford United Methodist Church, Inc.

For Complainant:

2/20/09
Date

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Enforcement Officer

Accordingly I hereby recommend
the Final Order attached hereto.

the Regional Administrator or his designee issue

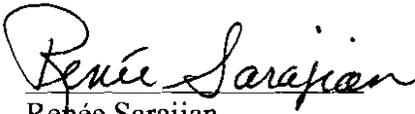
3/18/09
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division



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.

3/19/09
Date



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

