

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 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 Respondent 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 at least two hundred sixteen thousand five hundred twenty eight dollars (\$216,528) since April 8 and 9, 2008 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 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. On April 8 and 9, 2008, a duly authorized representative of the EPA conducted inspections at the:

Churchville Elementary School, located at 400 New Road in Churchville, Pennsylvania;
Council Rock South High School, located at 2002 Rock Way in Holland, Pennsylvania;
Hillcrest Elementary School, located at 420 East Holland Road in Holland, Pennsylvania;
Holland Middle School, located at 400 East Holland Road in Holland,

Pennsylvania; and
Rolling Hills Elementary School, located at 340 Middle Holland Road in Holland,
Pennsylvania (collectively, the "Facilities").

15. Respondent, the Council Rock School District, located at 30 North Chancellor Street in Newtown, Pennsylvania is a "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, including the Facilities, 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, including the Facilities.
16. Each of the Facilities 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.
17. Each of the Facilities are 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

18. The allegations contained in Paragraphs 1 through 17 are incorporated herein by reference.
19. Pursuant to 40 C.F.R. § 763.93(a)(3), if the 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.

20. During the April 8 and 9, 2008 inspections, the inspector discovered the Respondent did not have a management plan for the Council Rock South High School.
21. Respondent's failure to develop and submit to the Agency designated by the Governor a management plan for the Council Rock South High School prior to its use as a school building violated the requirements of 40 C.F.R. § 763.93(a)(3), also constituting a violation of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. Pursuant to 40 CFR § 763.93(g)(3), each school shall maintain in its administrative office a complete and updated copy of the management plan for that school.
24. During the April 8 and 9, 2008 inspections, the inspector discovered that the management plan in the administrative office of the Rolling Hills Elementary School did not include a copy of the 2007 reinspection.
25. Respondent's failure maintain a complete and updated copy of the management plan in the administrative office of the Rolling Hills Elementary School violated the requirements of 40 CFR § 763.93(g)(3), also constituting a violation of Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT III

26. The allegations contained in Paragraphs 1 through 25 are incorporated herein by reference.
27. Pursuant to 40 C.F.R. § 763.93(g)(4), upon submission of its management plan to the Governor and at least once each school year, the local education agency 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. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups, and a dated copy of the notification.

28. At the time of the TSCA/AHERA inspections conducted on April 8 and 9, 2008, the inspector discovered that the Council Rock School District had been failing to annually notify in writing parent, teacher, and employee organizations or groups of the availability of management plans for each of the Facilities.
29. By failing to annually notify in writing parent, teacher, and employee organizations of the availability of management plans, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4), also constituting violations of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

30. 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 sixteen thousand four hundred eighty three dollars (\$16,483) is appropriate.

31. 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.
32. Respondent certifies that it has spent two hundred sixteen thousand five hundred twenty eight dollars (\$216,528) since the April 8 and 9, 2008 inspections 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 sixteen thousand four hundred eighty three dollars (\$16,483) of the civil penalty assessed against the Respondent.
33. Respondent consents to the assessment of a sixteen thousand four hundred eighty three dollar (\$16,483) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

34. 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

35. 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:

1/12/09
Date

Mark J. Klein
Mark Klein
Superintendent
Council Rock School District

For Complainant:

1-20-09
Date

Stephen Forostiak
Stephen Forostiak
Compliance Officer

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

2/11/09
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

The effective date of this Final Order is the date that it is filed with the Regional Hearing

Clerk.

2/20/09
Date

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

