

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

IN RE:

Governor Mifflin School District
10 S. Waverly Street
Shillington, PA 19607

Respondent

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Docket No. TSCA-03-2016-0160

CONSENT AGREEMENT

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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 the Governor Mifflin 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 the Governor Mifflin Middle 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) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) address a violation 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 violation 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 the Environmental Protection Agency's ("EPA") 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. By signing and executing this CA, Respondent certifies that it has already spent at least six thousand six hundred sixty-six dollars (\$6,666.00) since EPA's inspection conducted on June 16, 2015 for the 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 a requirement 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) and (3), Complainant alleges the following findings of fact and conclusions of law.
14. Respondent, Governor Mifflin 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 Facility is in compliance with the requirements of AHERA.

15. The Facility, Governor Mifflin Middle School, located at 130 East Lancaster Avenue in Shillington, Pennsylvania, 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.
16. The Facility is 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. Pursuant to 40 C.F.R. § 763.93(g)(1) and (2), upon submission of a management plan to the Governor for review, each LEA shall maintain in its administrative office a complete, updated copy of a management plan for each school under its administrative control or direction. Furthermore, 40 C.F.R. § 763.93(g)(3) provides that each school shall maintain in its administrative office a complete, updated copy of the management plan for that school.
19. On June 16, 2015, an authorized representative of EPA conducted an inspection at the Governor Mifflin Middle School pursuant to TSCA. During the inspection, the EPA inspector requested to view the school’s management plan. The EPA inspector observed

that Respondent had failed to ensure that the school maintained a complete, updated copy of the management plan in its administrative office.

20. Respondent's failure to comply with the management plan requirements at the Facility on June 16, 2015 is a violation of 40 C.F.R. § 763.93(g)(3), and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

21. 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 a violation of TSCA. In full settlement of the violation 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 in the amount of five thousand eight hundred dollars (\$5,800.00) is appropriate.
22. 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 Asbestos Hazard Emergency Response Act ("ERP"), dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.

23. Respondent certifies that it has spent at least six thousand six hundred sixty-six dollars (\$6,666.00) since EPA's inspection conducted on June 16, 2015 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 five thousand eight hundred dollars (\$5,800.00) of the civil penalty assessed against Respondent.
24. Respondent consents to the assessment of a five thousand eight hundred dollar (\$5,800.00) civil penalty with a cash component of zero (\$0.00) dollars.

V. Reservation of Rights

25. This CAFO resolves only the Federal civil penalties for the specific violation 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.

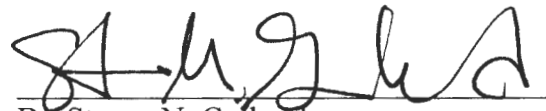
VI. Effective Date

26. 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:

7/20/16
Date


Dr. Steven N. Gerhard
Superintendent of Schools
Governor Mifflin School District

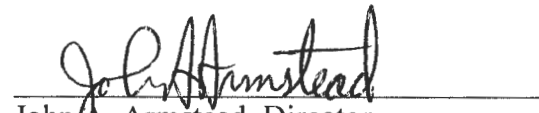
For Complainant:

7/28/2016
Date


Evelyn Sorto
Compliance Officer

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

8.9.16
Date


John A. Armstead, Director
Land and Chemicals Division

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

IN THE MATTER OF:

**Governor Mifflin School District
10 S. Waverly Street
Shillington, PA 19607**

Respondent

EPA Docket No.: TSCA-03-2016-0160

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, Governor Mifflin 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.

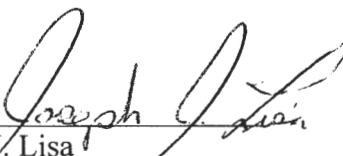
Based upon the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s January 1989 *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)* and the statutory factors set 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 five thousand eight hundred dollars (\$5,800.00), but that the cash component of that civil penalty will be zero dollars (\$0.00). In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), five thousand eight hundred dollars (\$5,800.00) 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.

Aug 10, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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

IN RE: :
: Governor Mifflin School District : Docket No. TSCA-03-2016-0160
10 S. Waverly Street :
Shillington, PA 19607 : CONSENT AGREEMENT
: Respondent :
:

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):



Dr. Steven N. Gerhard, Superintendent of Schools
Governor Mifflin School District
10 S. Waverly Street
Shillington, PA 19607

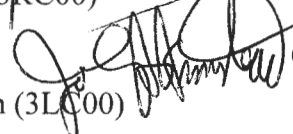
8/10/2016
Date

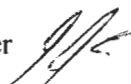
Evelyn Sorto
Evelyn Sorto
Compliance Officer

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

Subject: Toxic Substances Control Act
Governor Mifflin School District
Docket No. TSCA-03-2016-0160
Consent Agreement and Final Order

From:  Mary Coe, Regional Counsel
Office of Regional Counsel (3RC00)  8/4/16

John A. Armstead, Director
Land and Chemicals Division (3LC00)  8.9.16

To: Joseph J. Lisa, Regional Judicial Officer  8-10-2016
Office of Regional Counsel (3RC00)

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 Governor Mifflin School District. A civil penalty of five thousand eight hundred dollars (\$5,800.00) with a cash component of zero dollars (\$0.00) 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 June 2015 inspection, the LEA in this case documented costs to comply with AHERA and, therefore, the cash component of the assessed civil penalty is zero dollars (\$0.00). 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: Dr. Steven N. Gerhard, Superintendent of Schools
Governor Mifflin School District
10 S. Waverly Street
Shillington, PA 19607
steve.gerhard@gmsd.org
(610) 775-1461