

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: Stephen Forostiak

Name of Contact person

December 5, 2008

Date

in the Pesticides/Asbestos Programs & Enforcement Branch (3WC32)

Office

at 215-814-2136

Phone number

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

X

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

Maryland School for the Blind

The Total Dollar Amount of Receivable \$0

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2009-0034

The Site-Specific Superfund Acct. Number N/A

The Designated Regional/HQ Program Office Pesticides/Asbestos Programs and Enforcement Branch 3WC32)

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:

- | | |
|---|---|
| 1. Rosemarie Paceco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC)
3. 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:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 4. Regional Counsel |

RECEIVED
2009 FEB 11 PM 2:40
EPA REGION III PHILA PA

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

The Maryland School for the Blind
3501 Taylor Avenue
Baltimore, MD 21236

Docket No: TSCA 03-2009-0034

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 Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and the Maryland School for the Blind ("Respondent"). This CA includes the assessment of a civil penalty against the Respondent, because it is a local education agency liable for violations which occurred at the Maryland School for the Blind, 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 of TSCA alleged herein.

II. General Provisions

1. For 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 seven thousand eighty nine dollars (\$7,089) since June 27, 2007 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 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, the Maryland School for the Blind, located at 3501 Taylor Avenue in Baltimore, Maryland 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 the

owner of a nonpublic, non-profit elementary, or secondary school building, including the Facility, and is responsible for ensuring that the Facility is in compliance with the requirements of AHERA.

15. The Facility, the Maryland School for the Blind, 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.
16. The Maryland School for the Blind acted with deliberate speed to correct the violations once they were discovered.
17. The Maryland School for the Blind cooperated with the EPA and MDE, and acted in good faith throughout the investigation and resolution.

COUNT I

18. The allegations contained in Paragraphs 1 through 17 are incorporated herein by reference.
19. Pursuant to 40 C.F.R. § 763.85(b)(1) at least once every three years after a management plan is in effect, the local education agency shall conduct a reinspection of all friable and nonfriable known or assumed asbestos-containing building material in each school building that they lease, own, or otherwise use as a school building.
20. On June 27, 2007, a duly authorized inspector of the Maryland Department of the Environment ("MDE") conducted an inspection at the Maryland School for the Blind.
21. During the June 27, 2007 inspection, the MDE inspector discovered that no three year reinspections had been conducted at the Maryland School for the Blind which would determine whether there were any changes in the condition of the asbestos-containing

building materials identified in the Respondent's original management plan.

22. Respondent's failure to conduct three year reinspections violated 40 C.F.R. § 763.85(b)(1), also constituting a violation of Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

23. The allegations contained in Paragraphs 1 through 22 are incorporated herein by reference:
24. 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.
25. At the time of the TSCA/AHERA inspection conducted on June 27, 2007, the MDE inspector discovered that the Maryland School for the Blind had been failing to annually notify in writing parent, teacher, and employee organizations of the availability of management plans.
26. 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 a violation of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT III

27. The allegations contained in Paragraphs 1 through 26 are incorporated herein by reference.
28. Pursuant to 40 C.F.R. § 763.93(a)(2), if the local education agency begins to use a building as part of a school after October 12, 1988, the local education agency shall include the new building in the management plan for the school prior to its use as a school building. The revised portions of the management plan shall be submitted to the Agency designated by the Governor.
29. During the June 27, 2007 inspection, the MDE inspector observed that Maryland School for the Blind's Russo Art Center had not been included in the school's management plan.
30. Respondent's failure to revise its management plan to include the Russo Art Center and to submit the revised portions to the Agency designated by the Governor prior to its use as a school building violated the requirements of 40 C.F.R. § 763.93(a)(2), also constituting a violation of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

31. 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 six thousand five hundred dollars (\$6,500) is appropriate.

32. 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.
33. Respondent certifies that it has spent seven thousand and eighty nine dollars (\$7,089) since MDE's June 27, 2007 inspection 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 six thousand five hundred dollars (\$6,500) of the civil penalty assessed against the Respondent.
34. Respondent consents to the assessment of a six thousand five hundred (\$6,500) dollars civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

35. 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.

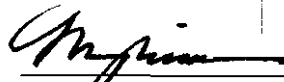
VI. Effective Date

36. 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:

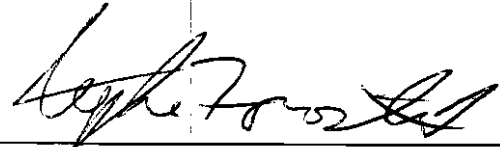
1-14-09
Date



Michael J. Bina, Ed. D.
President

For Complainant:


1-22-09
Date



Stephen Forostiak
Compliance Officer

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

2/5/09
Date



Abraham Ferdas, Director
Land and Chemicals Division



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

IN RE:

The Maryland School for the Blind
3501 Taylor Avenue
Baltimore, MD 21236

Docket No: TSCA 03-2009-0034

Respondent

Final Order

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, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of six thousand five hundred dollars (\$6,500), but that the cash component of that civil penalty will be zero dollars (\$0).

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the six thousand five hundred dollars (\$6,500) civil penalty assessed 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.

2/11/09
Date

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

