

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

In The Matter of: :
 :
Prince George's County School District :
14201 School Lane :
Upper Marlboro, MD 20772 :
 :
Respondent :

Docket No: TSCA-03-2016-0119

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 (“EPA” or “Complainant”) and the Prince George’s County 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 Ardmore Elementary 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 one million two hundred thousand dollars (\$1,200,000) since the Maryland Department of the Environment’s (MDE) January 30, 2015 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, Prince George’s County 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 Facilities are in compliance with the requirements of AHERA.

15. The Facility, one Ardmore Elementary School building, located at 9301 Arwick-Ardmore Road, Springdale, MD 20774, 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. The school building includes a physically attached addition and modular building, added in 1999 and 2000, respectively.
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. 40 C.F.R. § 763.85(a), requires, *inter alia*, that each LEA shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACBM.
19. On June 21, 1988 Prince George's County School District completed the initial inspection for the Ardmore Elementary School management plan.

20. The inspection conducted by MDE on January 30, 2015 found that Prince George's County School District had not inspected the 1999 addition to Ardmore Elementary School or the modular building addition to Ardmore Elementary School.
21. By failing to perform an inspection for the additions to Ardmore Elementary School, Respondent violated the requirements of 40 C.F.R. § 763.85(a).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. 40 C.F.R. § 763.86, provides, *inter alia*, that an accredited inspector collect bulk samples from each homogenous area material, that is not assumed to be ACM, in accordance with the requirements outlined in 40 C.F.R. § 763.86(a) through (d).
24. The inspection conducted by MDE on January 30, 2015 found that Prince George's County School District had not collected bulk samples in accordance with 40 C.F.R. § 763.86 during the inspection for suspected material not assumed to be ACBM for the following suspect materials at Ardmore Elementary School: 3" black, brown, beige and 4" navy blue vinyl based cove moldings-mastics, veneer and cores of folding partition walls 30-2 and 24-26, stainless sink undercoatings, rope and woven gasketing on two Hurst boilers, and the navy stage curtain in multi-purpose room.
25. By failing to collect bulk samples, Respondent violated the requirements of 40 C.F.R. § 763.86.

IV. Settlement Recitation

26. 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 six thousand three hundred seventy five dollars (\$6,375) is appropriate.

27. 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.
28. Respondent certifies that it has spent at least one million two hundred thousand dollars (\$1,200,000) since MDE's January 30, 2015 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 six thousand three hundred seventy five dollars (\$6,375) of the civil penalty assessed against Respondent.
29. Respondent consents to the assessment of six thousand three hundred seventy five dollars (\$6,375) civil penalty with a cash component of zero dollars (\$0).

V. Reservation of Rights

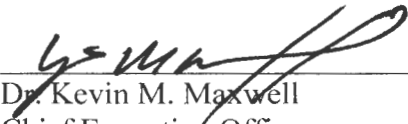
30. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, 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

31. 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:

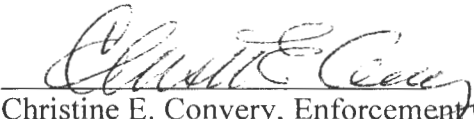
8/11/14
Date



Dr. Kevin M. Maxwell
Chief Executive Officer
Prince George's County Public Schools

For Complainant:

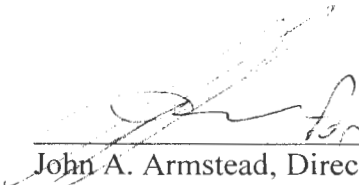
9/15/14
Date



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.

9/15/14
Date



John A. Armstead, Director
Land and Chemicals Division

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

IN THE MATTER OF:

**Prince George's County School District
14201 School Lane
Upper Marlboro, MD 20772**

Respondent

EPA Docket No.: TSCA-03-2016-0119

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, Prince George's County 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.

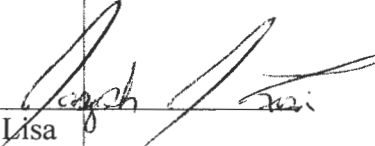
Based upon the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's January 1989 *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)* and the statutory factors set 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 six thousand three hundred seventy five dollars (\$6,375.00) but that the cash component of that civil penalty will be zero (\$0.00) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), six thousand three hundred seventy five dollars (\$6,375.00) 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.

Sept. 20, 2016
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: | : | |
| | : | |
| | : | Docket No. TSCA-03-2016-0119 |
| Prince Georges County School District | : | |
| 14201 School Lane | : | |
| Upper Marlboro, MD 20772 | : | |
| | : | |
| | : | 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. Wesley Watts
Chief Operating Officer
Prince George's County School District
14201 School Lane
Upper Marlboro, MD 20772

Date: 9/20/16


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

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

Subject: Toxic Substances Control Act
Prince George's County School District
Docket No. TSCA-03-2016-0119
Consent Agreement and Final Order

From:  Mary Coe, Regional Counsel
Office of Regional Counsel (3RC00)

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

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

9/12/16

for 9/15/16

9-26-2016

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 Prince George’s County School District. A civil penalty of six thousand three hundred seventy five dollars (\$6,375.00) 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 Maryland Department of Environment’s January 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. Wesley Watts, Chief Operating Officer
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772
wesley.watts@pgcps.org