

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

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2013 DEC -3 AM 11: 56

REGIONAL HEARING OFFICE
EPA REGION III, PHIL. A. PA.

IN RE: :

Diocese of Arlington :
200 North Glebe Road :
Arlington, VA 22203 :

Docket No: TSCA-03-2014-0026

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 Division, U.S. Environmental Protection Agency – Region III (“EPA” or “Complainant”) and the Diocese of Arlington (“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 St. Ambrose Elementary School, St. Bernadette Elementary School, St. Luke Elementary School, St. Veronica Elementary School, and Paul VI High School (the “Facilities”), 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 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 for 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 forty six thousand three hundred ninety dollars (\$46,390) since EPA’s July 2009 inspections 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, Diocese of Arlington, 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. § 753.83, because it is the owner of a nonpublic, non-profit elementary, or secondary

school building, including the Facilities, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

15. The Facilities, St. Ambrose Elementary School, located at 3827 Woodburn Road, Annandale, Virginia; St. Bernadette Elementary School, located at 7602 Old Keene Mill Road, Springfield, Virginia; St. Luke Elementary School, located at 7005 Georgetown Pike, McLean, Virginia; St. Veronica Elementary School, located at 3460 Centerville Road, Chantilly, Virginia; and Paul VI High School, located at 10675 Fairfax Boulevard, Fairfax, Virginia are each 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 Facilities are each 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. § 763.93(g)(4), requires, *inter alia*, that at least once each school year, the LEA notify in writing parent, teacher, and employee organizations of the availability of management plans and include in the management plans a description of the steps taken to notify such organization, and a dated copy of the notification.
19. The inspections conducted by EPA in July 2009 found that Diocese of Arlington had not provided annual notifications to parent, teacher, and/or employee organizations.
20. By failing to send annual notifications to parents, teachers, and employee organizations about the availability of the schools’ management plans, Respondent violated the

requirements of 40 C.F.R. § 763.93(g)(4) 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 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 eighteen thousand seven hundred dollars (\$18,700) is appropriate.
22. 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.
23. Respondent certifies that it has spent forty six thousand three hundred and ninety dollars (\$46,390) since EPA's July 2009 inspections to comply with Subchapter II of TSCA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. §§ 2615(a)(2)(C) and

2647(a), EPA agrees to the remittance of eighteen thousand seven hundred dollars (\$18,700) of the civil penalty assessed against Respondent.

24. Respondent consents to the assessment of eighteen thousand seven hundred dollar (\$18,700) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

25. 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

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:

9/30/13
Date

Sr. Bernadette McManigal
Sr. Bernadette McManigal, Superintendent
Diocese of Arlington

For Complainant:

10/23/2013
Date

Evelyn Sorto
Evelyn Sorto, Enforcement Officer
Pesticides and Asbestos Programs Branch

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

11.18.13
Date

John Armstead
John Armstead, Director
Land and Chemicals Division

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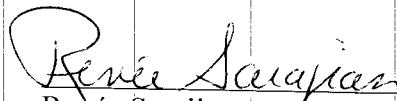
FINAL ORDER

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, Respondent is assessed a civil penalty of eighteen thousand seven hundred dollars (\$18,700), 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), eighteen thousand seven hundred dollars (\$18,700) of the 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.

12/2/13
Date



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

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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CONSENT AGREEMENT

CERTIFICATE OF SERVICE

I hereby certify that the original 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):

Sr. Bernadette McManigal, Superintendent
Diocese of Arlington
200 North Glebe Road
Arlington, VA 22203

12/3/2013
Date

Evelyn Sorto
Evelyn Sorto
Enforcement Officer
U.S. Environmental Protection Agency, Region III