

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

FILED

2007 JUL 27 PM 1:45

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

In the matter of: ) Docket No. **TSCA-09-2007-0003**  
)  
) **CONSENT AGREEMENT**  
) and  
) **FINAL ORDER PURSUANT TO**  
) **SECTIONS 22.13 AND 22.18**  
)  
Aprender Tucson )  
)  
) Respondent. )  
\_\_\_\_\_ )

**I. CONSENT AGREEMENT**

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent **Aprender Tucson** (hereafter "**Respondent**") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("**CAFO**").

**A. APPLICABLE STATUTES AND REGULATIONS**

1. This administrative proceeding is initiated pursuant to Section 207 of the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.* (hereinafter referred to as "**TSCA**" or the "**Act**"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. This proceeding involves the Asbestos Hazard Emergency Response Act ("**AHERA**"), also known as title II of TSCA, and the regulations promulgated thereunder. Section **203(b)** of TSCA, 15 U.S.C. § 2643(b), required the Administrator of EPA to, among other things, promulgate regulations prescribing procedures for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency ("**LEA**"). Section **203(i)** of TSCA, 15 U.S.C. § 2643(i), required the Administrator of EPA to, among other things, promulgate regulations requiring each LEA to develop and implement an asbestos management plan for school buildings under its authority. These regulations are codified *In re: Aprender Tucson, AHERA 2007, page 1*

at 40 C.F.R. Part 763, Subpart E (the “**Subpart E regulations**”).

3. Section 763.85(a)(2) of the Subpart E regulations states that any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a)(3) and (4) of section 763.85 prior to use as a school building, and that in the event that emergency use of an uninspected building as a school building is necessary, such buildings shall be inspected within 30 days after commencement of such use. Section 763.93(g)(2) of the Subpart E regulations provides that 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. 40 C.F.R. § 763.93(g)(2). Section 763.93(g)(3) of the Subpart E regulations provides that each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. 40 C.F.R. § 763.93(g)(3).

4. Sections 207(a)(1) and 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), provides that any LEA that fails to conduct an inspection, or fails to develop a management plan, pursuant to regulations under Section 203(i) of TSCA, 15 U.S.C. § 2643(i), is liable for a civil penalty. Section 207(a) of TSCA, 15 U.S.C. §§ 2647(a), the Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a civil penalty of (1) not more than \$ 5,000 for each day during which a violation continues, for violations on or before January 30, 1997; (2) not more than \$ 5,500 for each day during which a violation continues, for violations after January 30, 1997 but on or before March 15, 2004; and (3) not more than \$ 6,500 for each day during which a violation continues, for violations after March 15, 2004.

5. Section 207(a) of TSCA, 15 U.S.C. § 2647(a), further provides that any civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the

case of civil penalties assessed and collected under Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation(s), and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. Section 207(a) states that any civil penalty collected shall be used by the LEA to comply with TSCA Title II, with any portion remaining unspent to be deposited into the Asbestos Trust Fund, established pursuant to Section 5 of the Asbestos Hazard Emergency Response Act of 1986, codified at 20 U.S.C. § 4022. In addition, Section 207(c) of TSCA, 15 U.S.C. § 2647(c), requires EPA to consider the significance of the violation, the culpability of the violator, including any history of previous TSCA violations, the ability of the violator to pay the penalty, and the ability of the violator to continue to provide educational services to the community.

#### **B. AUTHORITY AND PARTIES**

6. Respondent holds a charter for Southside Community School, which is a Arizona Charter school. Arizona Charter schools are public, state-funded schools constituted within the state of Arizona pursuant to the Arizona Charter School Law of 1994. See Arizona Revised Statutes Education Code §15-181 to §15-189. Arizona Charter schools contract with the Arizona State Board of Education, the Arizona State Board for Charter Schools, or a district to provide an education service.

7. The authority to take action under Section 207 of TSCA, 15 U.S.C. § 2647, is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 12-2-A, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under TSCA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number R9

1260.06A dated May 19, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

### C. COMPLAINANT'S ALLEGATIONS

8. Respondent began operating the Southside Community School on or about 2001. Respondent owns, leases, or otherwise uses, at the minimum, one (1) "school building," as defined in Section 202(13) of TSCA Title II, 15 U.S.C. § 2642(13), and in 40 C.F.R. §§ 763.83, located at 2701 S. Campbell Avenue, Tucson, Arizona. Respondent is a "Local Educational Agency" ("LEA"), as defined in Section 202(7) of TSCA Title II, 15 U.S.C. § 2642(7), and in 40 C.F.R. §§ 763.83.

9. Sections 203(i) and 205(d) of TSCA Title II, 15 U.S.C. § 2643(i) and 2645(d), require that Respondent, prior to using a building as a school after October 12, 1988, conduct an inspection and have developed a valid asbestos management plan. Section 207(a)(3) of TSCA Title II, 15 U.S.C. § 2647(a)(3), and 40 C.F.R. § 763.97(a), make it unlawful for Respondent to fail to conduct such inspections and develop such an asbestos management plan, and provide that each separate failure to comply with respect to a single school building constitutes a violation of Section 207(a)(3) of TSCA Title II. If a signed statement of an architect has been submitted to EPA pursuant section 763.99(f), 40 C.F.R. § 763.99(a)(7), then the LEA is not required to perform an inspection.

10. As of May 23, 2006, Respondent had not conducted such inspection nor submitted a signed statement of an architect to EPA, nor had Respondent developed such an asbestos management plan for the Southside Community School, located at 2701 S. Campbell Avenue, Tucson, Arizona, operated by Respondent.

11. Respondent violated Section 207(a)(1) of TSCA Title II, 15 U.S.C. § 2647(a)(1), by failing to either submit to EPA a signed statement of an architect or conduct an inspection, pursuant to Section 203(b) of TSCA Title II, 15 U.S.C. § 2643(b), and regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school building referenced in Paragraph 8 above.

12. Respondent violated Section 207(a)(3) of TSCA Title II, 15 U.S.C. § 2647(a)(3), by failing to develop an asbestos management plan, pursuant to Section 203(i) of TSCA Title II, 15 U.S.C. § 2643(i), and regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school building referenced in Paragraph 8 above.

#### **D. RESPONDENT'S ADMISSIONS**

13. To avoid the disruption of orderly educational activities and the expense of protracted and costly litigation, Respondent, in accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO, including but not limited to its right under Section 16(a)(2)(A) of TSCA to request a hearing; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

#### **E. RESPONDENT'S CERTIFICATION**

14. Respondent hereby certifies that currently all areas of Southside Community School fall within areas excluded under section 763.99, 40 C.F.R. § 763.99.

#### **F. COMPLIANCE WITH AHERA**

15. After EPA's May, 2006 inspection, Respondent had a management plan prepared and submitted this management plan to EPA. Respondent has also provided to EPA an accounting of

the costs incurred by Respondent in complying with AHERA. In executing this CAFO, Respondent certifies that it has complied with AHERA and the AHERA Subpart E regulations at Southside Community School and all other facilities under its control which are subject to AHERA requirements.

#### F. CIVIL ADMINISTRATIVE PENALTY

16. Respondent consents to the assessment of a penalty in the amount of **ONE THOUSAND FOUR HUNDRED FIFTY THREE DOLLARS (\$1,453)**, as specified in this Paragraph as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO. This penalty has been reduced to reflect the EPA approved costs of Respondent's compliance with AHERA and the AHERA Subpart E regulations.

17. Respondent shall pay the civil penalty amount required by Paragraph 16 within **thirty (30)** calendar days of the effective date of this CAFO. Payment shall be made by cashier's or certified check, payable to the order of the "Treasurer of the United States of America." The check shall state on the reverse side, "For Deposit Into the Asbestos Trust Fund, 20 U.S.C. § 4022" and shall be accompanied by a cover letter identifying this CAFO, the docket number, and stating that payment is being made pursuant to Section E of this Agreement. Respondent shall mail the check and the letter by Certified Mail, Return Receipt Requested, to the following address:

U.S. Environmental Protection Agency  
Headquarters Accounting Operations Branch  
Attention: Asbestos Trust Fund  
P.O. Box 360277M  
Pittsburgh, PA 15251

When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)

*In re: Aprender Tucson, AHERA 2007, page 6*

U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

- b) Ron Tsuchiya  
Toxics Office  
Communities and Ecosystems Division (CED-4)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

18. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that payment is late. Upon Complainant's written demand, payment shall immediately become due and payable.

19. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

20. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act, rules promulgated thereunder, and other Federal, state or local laws or statutes.

21. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

22. Except as set forth in Paragraph 19 above, each party shall bear its own costs, fees, and disbursements in this action.

23. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

24. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

26. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind



that party to it.

**APRENDER TUCSON:**

Date: May 25, '07 By: Ch Lant

Name: Christine Curtis

Title: President

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

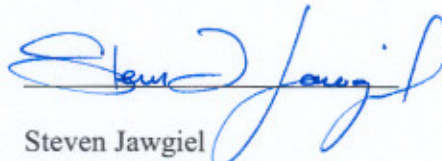
Date: 7/16/07 By: [Signature]

ENRIQUE MANZANILLA  
Director, Communities and Ecosystems Division  
U.S. Environmental Protection Agency,  
Region IX

**II. FINAL ORDER**

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall comply with the terms set forth in the Consent Agreement and pay the full civil penalty amount of **ONE THOUSAND FOUR HUNDRED FIFTY THREE DOLLARS (\$1,453)** in accordance with the terms set forth in the Consent Agreement.

Date: 07/26/07



Steven Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R §§ 22.13 and 22.18 ( Docket No. TSCA-<sup>09</sup>9-2000-0003) against Aprender Tucson, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Ms. Christine Curtis  
President  
Aprender Tucson  
2701 South Campbell Avenue  
Tucson, AZ 85713

Certified Mail No. 7005 3110 0002 8247 1162

*Danielle E. Carr*

Danielle Carr  
Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX

Date *07-27-07*