

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: Rich Panak 09-29-09
Name of Contact person Date

in the Pesticide & Asbestos Branch at 215 874 2844
Office Phone number

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

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

Boyer town Area School District

The Total Dollar Amount of Receivable \$ 0.00

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

The Case Docket Number TSCA 03-2009-0259

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Region 3 Land & Chemicals

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:

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

- Originating Office
- Designated Program Office
- Regional Hearing Clerk
- Regional Counsel

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

RECEIVED
2009 SEP 19
PHILADELPHIA

IN RE: :
: :
Boyertown Area School District : DOCKET NO: TSCA-03-2009-0259
911 Montgomery Ave. :
Boyertown, PA 19512 :
: CONSENT AGREEMENT
Respondent :
:

CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement (“CA”), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act (“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 Boyertown Area School District. This CA includes the assessment of a civil penalty against The Boyertown Area School District (“Respondent”), because it is a local education agency liable for violations which occurred at Pine Forge Elementary School, located at Pine Forge and Glendale Roads, Pine Forge, Pennsylvania; Boyertown Junior High School West, located at 380 South Madison Street, Boyertown, Pennsylvania; New Hanover-Upper Frederick School, located at 2547 Big Road, Frederick, Pennsylvania; Boyertown Elementary School, located at 641 East Second Street, Boyertown, Pennsylvania; and Earl Elementary School, located at 22 Schoolhouse Road,

Boyertown, Pennsylvania(the “Facilities”), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency Response Act (“AHERA”), 15 U.S.C. §§ 2641 to 2656 (“TSCA AHERA”). This action is brought in accordance with TSCA AHERA 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 TSCA 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 AHERA 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 TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
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 sixteen thousand two hundred seventy three dollars (\$16,273) since EPA's July 2008 inspections for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 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 AHERA and the federal regulations implementing TSCA 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, Boyertown Area School District, is the “Local Education Agency” (“LEA”) as that term is defined under Section 202(7) of TSCA AHERA, 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, including the Facilities, 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, including the Facilities and as such, is responsible for ensuring that the Facility is in compliance with the requirements of TSCA AHERA.
15. The Facilities, Pine Forge Elementary School located at Pine Forge and Glendale Roads, Pine Forge, Pennsylvania, Boyertown Junior High School West located at 380 South

Madison Street, Boyertown, Pennsylvania, New Hanover-Upper Frederick School located at 2547 Big Road, Frederick, Pennsylvania, Boyertown Elementary School located at 641 East Second Street, Boyertown, Pennsylvania, Earl Elementary School located at 22 Schoolhouse Road, Boyertown, Pennsylvania are each a “school” as that term is defined at Section 202(12) of TSCA AHERA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.

16. Each of the Facilities is a “school building” as that term is defined at Section 202(13) of TSCA AHERA, 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) (1)-(3), requires, *inter alia* that LEAs maintain complete and updated copies of management plans in LEA and school administrative offices, and make them available for inspection.
19. Inspections conducted by EPA in July 2008 found that Respondent had not made the management plans available at Pine Forge Elementary School, Boyertown Junior High School West, New Hanover-Upper Frederick School, Boyertown Elementary School, and Earl Elementary School
20. By failing to make the management plans available, Respondent violated the requirements of 40 C.F.R § 763.93(g) (1)-(3) and Section 207 of TSCA AHERA, 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 Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), for Respondent's TSCA AHERA violation. 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 AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of ten thousand fifty eight dollars (\$10,058) 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 AHERA, 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 sixteen thousand two hundred seventy three dollars (\$16,273) since EPA's July 2008 inspections to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15

U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of ten thousand fifty eight dollars(\$10,058) of the civil penalty assessed against the Respondent.

24. Respondent consents to the assessment of a ten thousand fifty eight dollar (\$10,058) 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 TSCA AHERA, 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

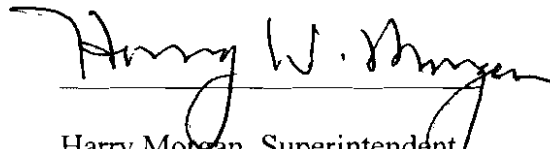
26. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice. The undersigned

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:

9-11-09

Date

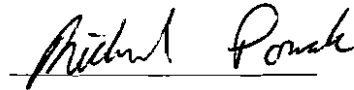


Harry Morgan, Superintendent
Boyertown Area School District

For Complainant:

9/28/09

Date




Richard Ponak
Enforcement Officer

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

9/28/09

Date



 Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

IN RE: :

Boyertown Area School District : DOCKET NO: TSAC-03-2009-0259
911 Montgomery Ave. :
Boyertown, PA 19512 :

: **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 Section 16 of TSCA and Section 207 of TSCA AHERA, 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 AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of ten thousand fifty eight dollars (\$10,058), but that the cash component of that civil penalty will be zero dollars (\$0).

In accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), the ten thousand fifty eight dollars (\$10,058) 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.

9/29/09
Date



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

