

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

SEP 20 PM 5:17

In the Matter of:

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FINAL ORDER

New Chester Plaza LLC,

Respondent.

Docket No. TSCA-03-2009-0123

NOW, THEREFORE, pursuant to 40 C.F.R. Part 22, Subpart C, § 22.18(b)(2) and (3), and Subpart G, § 22.31, it is hereby ORDERED that:

I. GENERAL PROVISIONS

1. This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22. The provisions of 40 C.F.R. Part 22, §§ 22.18(b)(2) and (3) and 22.31 govern the process of concluding this proceeding by final order.
2. The undersigned ratifies and incorporates by reference into this final order the consent agreement executed by the parties in this proceeding. The factual allegations and legal conclusions of the NON in this proceeding were incorporated by reference into the consent agreement. However, as provided in the consent agreement, for the purpose of this proceeding, except as otherwise provided in the consent agreement, Respondent New Chester neither admits nor denies the factual allegations and legal conclusions of the NON.
3. This final order constitutes the final Agency action in this proceeding as to Respondent New Chester.
4. Nothing in this final order is intended to, or shall be construed to, operate in any way to resolve any criminal liability of Respondent. Nothing in this final order shall be construed to limit the authority of EPA to undertake 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 or welfare, or the environment.
5. As provided in the aforementioned consent agreement, this final order resolves only Respondent New Chester's civil penalty liability for the violations alleged in the NON.

6. This final order does not waive, extinguish or otherwise affect Respondent New Chester's obligations to comply with all applicable provisions of the federal Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and regulations promulgated thereunder.
7. This final order is effective upon filing with the Regional Hearing Clerk.

II. CIVIL PENALTY


1. A civil penalty in the amount of nine thousand dollars (\$9,000) is assessed against Respondent New Chester Plaza LLC (New Chester).
2. In light of Section II., Paragraph 1 immediately above, Respondent New Chester shall pay its assessed civil penalty as follows:

Within thirty (30) calendar days after the effective date of this final order, Respondent New Chester shall pay the full amount of the assessed civil penalty. This final order shall not terminate or otherwise lapse until the assessed civil penalty is paid in full. Respondent New Chester shall make timely payment of the assessed civil penalty by sending a cashier's check or certified check, made payable to the Treasurer of the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check shall note the case title and docket number. Copies of the check shall be served upon the Regional Hearing Clerk and EPA as follows: Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and James M. Baker (3RC10), Senior Assistant Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Date: 5/14/09


Renée Sarajian
Regional Judicial Officer

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

In the Matter of:

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CONSENT AGREEMENT

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New Chester Plaza LLC,

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Docket No. TSCA-03-2009-0123

Respondent.

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I. PRELIMINARY STATEMENT

On September 30, 2008, the Chief, Pesticides and Asbestos Programs Branch, Land and Chemicals Division, Region III, United States Environmental Protection Agency (EPA), issued a Notice of Noncompliance and Opportunity to Resolve (NON) to New Chester Plaza LLC (New Chester) for noncompliance with certain requirements of the federal Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, regarding the design or conduct of a response action...with respect to friable asbestos-containing material...in a public or commercial building. These requirements are found in Section 206(a)(3) of TSCA, 15 U.S.C. § 2646(a)(3).

II. STIPULATION

Respondent New Chester is a corporation which owns and, at all times relevant hereto, has owned the premises at 3200 West 9th Street, Chester, Pennsylvania 19018 (site of the former Vesuvio Pizzeria).

III. GENERAL PROVISIONS

1. This proceeding is governed by the Consolidated Rules, 40 C.F.R. Part 22. As provided in 40 C.F.R. Part 22, § 22.18(b)(1), EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and applicable regulations. 40 C.F.R. § 22.13 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. In the event a settlement is reached, the provisions of 40 C.F.R. Part 22, § 22.18(b)(2) and (3), and (c), govern the process of effectuating the settlement and concluding the proceeding.

2. Any and all terms and conditions of this settlement are recorded herein.

3. For the purpose of this proceeding, Respondent New Chester admits the jurisdictional allegations set forth in this consent agreement.
4. The factual allegations and legal conclusions of the NON are incorporated by reference into this consent agreement. However, for the purpose of this proceeding, except as otherwise provided in Paragraph 3 and herein, Respondent New Chester neither admits nor denies the factual allegations and legal conclusions of the NON.
5. For the purpose of concluding this proceeding with respect to Respondent New Chester, Respondent New Chester waives any right to contest the allegations of the NON and this Consent Agreement and accompanying proposed final order and any right to appeal the proposed final order accompanying this consent agreement. Respondent New Chester consents to the issuance of the proposed final order accompanying this consent agreement.
6. The parties agree to bear their own costs and attorneys fees.

IV. SETTLEMENT

1. The civil penalty noted below for the above-referenced TSCA violations was determined in accordance with 1) Section 207(g) of TSCA, 15 U.S.C. § 2647(g), and 2) EPA's January 31, 1989 Enforcement Response Policy for the Asbestos Hazard Emergency Response Act, as amended in May and August 1998 (TSCA penalty policy), as supplemented and modified, including the Enforcement Response Policy for the Asbestos Model Accreditation Plan, dated March 9, 1998, and the modifications, dated May 9, 1997 and September 21, 2004, to implement the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), pursuant to the Debt Collection Improvement Act of 1996.
2. To develop the TSCA penalty, EPA took into account the TSCA penalty policy, as supplemented and modified, and the particular facts and circumstances of the case.
3. For the purpose of this proceeding, Respondent New Chester consents to the assessment of a civil penalty of \$9,000 against it for the TSCA violations alleged in the NON and incorporated into this Consent Agreement. Respondent New Chester agrees to pay the full amount of this civil penalty in accordance with the proposed final order accompanying this consent agreement.
4. Full payment of the civil penalty provided for herein shall only resolve Respondent New Chester's civil penalty liability for the violations alleged in the NON. Nothing in this consent agreement is intended to, or shall be construed to, operate in any way to resolve any criminal liability of Respondent. Nothing in this consent agreement shall be construed to limit the authority of EPA to undertake 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 or welfare, or the environment.

5. Respondent New Chester certifies that, as of the time of its execution of this consent agreement, it is in compliance with all applicable requirements of Section 206(a)(3) of TSCA, 15 U.S.C. § 2646(a)(3). On and after the date of Respondent New Chester's execution of this consent agreement, Respondent New Chester shall maintain compliance with all applicable requirements of Section 206(a)(3) of TSCA, 15 U.S.C. § 2646(a)(3).

6. The undersigned representative of Respondent New Chester certifies that he is fully authorized by that Respondent to execute this consent agreement and to legally bind that Respondent to its terms and conditions.

Date:

3/27/09



Anthony DeSanctis
Manager, New Chester Plaza LLC
Representative of Respondent New Chester

Date:

5/4/09



Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA - Region III