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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19104-2024

2012 JUN 20 AM 11:42
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IN RE:

Montgomery County Department of General
Services
101 Monroe Street
9th Floor
Rockville, MD 20850

Docket No: TSCA-03-2012-0081

Consent Agreement

Respondent

The Frost School
4915 Aspen Hill Road
Rockville, MD 20853

Facility

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, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Montgomery County Department of General Services. This CA includes the assessment of a civil penalty against Montgomery County Department of General Services ("Respondent"), because it is a local education agency liable for violations which occurred at The Frost School, located at 4915 Aspen Hill Road, Rockville, Maryland (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 a violation by Respondent of 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 of TSCA alleged herein.

II. General Provisions

1. For 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.
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7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, the Facility is in compliance with the provisions of the Asbestos Hazard Emergency Response Act ("AHERA"), Subchapter II of TSCA, 42 U.S.C. §§ 264I-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 nineteen thousand dollars (\$19,000) since Maryland Department of the Environment ("MDE") July 2, 2007 inspection for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with § 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 a requirement 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, Montgomery County Department of General Services, 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 the owner of a nonpublic, non-profit elementary, or secondary school building, including the facility in Montgomery County, Maryland.
15. The Frost School, located at 4915 Aspen Hill Road, Rockville, Maryland, 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.
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(b)(1) requires LEA to conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building, at least once every three years after a management plan is in effect.
19. During the inspection conducted MDE on July 2, 2007, the duly authorized inspector observed that the Respondent had failed to perform a reinspection since 2002.
20. Respondent's failure to conduct a reinspection of all friable and nonfriable known or assumed ACBM material at least once every three years is a violation of 40 C.F.R. § 763.85 (b)

COUNT II

21. The allegations contained in Paragraphs 1-20 are incorporated herein by reference.
22. 40 C.F.R. § 763.90(g) requires that response action including removal, encapsulation, enclosure, or repair, other than small-scale, short-duration repairs, shall be designed and conducted by persons accredited to design and conduct response actions.
23. During the inspection conducted on July 2, 2007, MDE found that Montgomery County Department of General Services did not use accredited persons to perform removal of more than 3000 square feet of asbestos tile during a major renovation in April/May of 2007.
24. Respondent's failure to use an accredited contractor for asbestos removal is a violation of 40 C.F.R. § 763.90(g).

IV. Settlement Recitation

25. 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, 15 U.S.C. § 2647(a), for Respondent's TSCA violations. 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 five hundred dollars (\$6,500) is appropriate.
26. 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, 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.

27. Respondent certifies that it has spent nineteen thousand dollars (\$19,000) since MDE's inspection to comply with Subchapter II of TSCA. Therefore, pursuant to sections 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 five hundred dollars (\$6,500) of the civil penalty assessed against the Respondent.
28. Respondent consents to the assessment of a six thousand five hundred dollars (\$6,500) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

29. 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

30. 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:

5/23/12
Date

Bonnie Bell-Pearse ACO for
Timothy Firestine Chief Administrative
Officer
Montgomery County

For Complainant:

5/30/12
Date

Jan A. Brogdon Jr.
Mr. Ralph A. Brogdon Jr.
Enforcement Officer

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

6/13/2012
Date

Abraham Ferdas for AF
Abraham Ferdas, Director
Land and Chemicals Division

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY
BY Cheryl S. Royalty
DATE: 5/23/12





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Montgomery County Department of General .
Services . Docket No. TSCA-03-2012-0081
101 Orchard Ridge Drive .
2nd Floor .
Gaithersburg, MD 20878 . Final Order
Respondent .
The Frost School .
4915 Aspen Hill Road .
Rockville, MD 20853 .
Facility .

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 Six thousand five hundred dollars (\$6,500), but that the cash component of that civil penalty will be zero dollars (\$0).

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), six thousand five hundred dollars (\$6,500) penalty assessed against Respondent is hereby remitted. The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

6/19/12
Date

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



