

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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IN RE:	:	
	:	
Bethlehem Area School District	:	Docket No: TSCA-03-2008-0129
1516 Sycamore Street	:	
Bethlehem, Pa 18017	:	
	:	Consent Agreement
	:	
<b>Respondent</b>	:	

**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 Bethlehem Area School District. This CA includes the assessment of a civil penalty against Bethlehem Area School District ("Respondent"), because it is a local education agency liable for violations which occurred at Rosemont Career Academy, Governor Wolf Elementary School, Freedom Senior High School, Asa Packer Elementary School, and William Penn Elementary School, all located in Bethlehem, PA (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 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 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.
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

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 eighty one thousand six hundred ninety four dollars (\$81,694) since EPA's February and March 2007 inspections 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 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, Bethlehem Area School District, 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 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 Facilities are in compliance with the requirements of AHERA.

15. The Facilities, Rosemont Career Academy, located at 815 Pennsylvania Ave., Bethlehem, PA, Governor Wolf Elementary Academy located at 1920 Butztown Rd., Bethlehem, PA, Freedom Senior High School located at 3149 Chester Ave., Bethlehem, PA, Asa Packer Elementary School located at 1650 Kenwood Dr., Bethlehem, PA, and William Penn Elementary School located at 1002 main St., Bethlehem, PA 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 "school buildings" 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 plan a description of the steps taken to notify such organizations, and a dated copy of the notification.
19. Inspections conducted by EPA in February and March 2007 found that Bethlehem Area School District had not provided annual written notifications to parent, teacher, and/or employee organizations at each of the Facilities.
20. Respondent's failure to provide the annual notifications at each of the Facilities are violations of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT II,

21. The allegations contained in paragraphs 1 through 20 are incorporated herein by reference.
22. 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.
23. Inspections conducted by EPA on March 1, 2007 found that Bethlehem Area School District had not made the management plans available at Freedom High School, Governor Wolf Elementary School, and Rosemont Career Academy.
24. Respondent's failure to make the management plan available at Freedom High school, Governor Wolf Elementary School, and Rosemont Career Academy are violations of 40

C.F.R. § 763.93(g) (1)-(3) and Section 207 of TSCA, 15 U.S.C. § 2647 (a)(3).

#### **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 twenty nine thousand six hundred thirty nine dollars (\$29,639) 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 at least eighty one thousand six hundred ninety four dollars ( \$81,694) since EPA's February and March 2007 inspections 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 twenty nine thousand six hundred thirty nine dollars( \$29,639) of the civil penalty assessed against the Respondent.
28. Respondent consents to the assessment of a twenty nine thousand six hundred thirty nine dollars (\$29,639) 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.

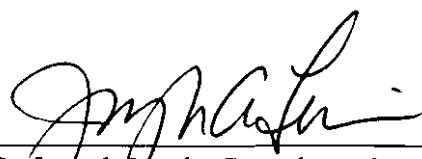
#### **VI. Effective Date**

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.

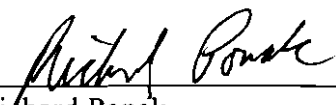
**For Respondent:**

3/10/08  
Date

  
Dr. Joseph Lewis, Superintendent  
Bethlehem Area School District

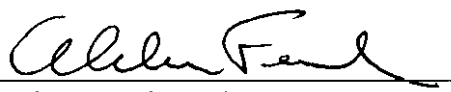
**For Complainant:**

3/17/08  
Date

  
Richard Ponak  
Enforcement Officer

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

3/26/08  
Date

  
Abraham Ferdas, Director  
Waste and Chemicals Management Division





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
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 :  
 **Respondent** :

**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 twenty nine thousand six hundred thirty nine dollars (\$29,639), 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), the twenty nine thousand six hundred thirty nine dollars (\$29,639) civil 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.

3/28/08  
Date

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

