

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

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IN RE: :  
: :  
Board of Education of Prince George's County : Docket No: TSCA-03-2008-0038  
Public Schools :  
14201 School Lane :  
Upper Marlboro, Maryland 20772 :  
: Consent Agreement  
: :  
**Respondent** :

**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 the Board of Education of Prince George's County Public Schools ("PGCPS"). This CA includes the assessment of a civil penalty against PGCPS ("Respondent"), because it is a local education agency liable for violations which occurred at Excel Academy Public Charter School, Potomac Public Charter School, and Turning Point Academy Public Charter School, all located in Prince George's County, Maryland (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

Hazard 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 two thousand five hundred dollars (\$2,500) since the Maryland Department of the Environment's ("MDE's") November 2006 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, PGCPs, 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, Excel Academy Public Charter School, 6251-A Ammendale Road, Beltsville, MD, Potomac Public Charter School, 12788 Old Fort Road, Forth Washington, MD, and Turning Point Academy Public Charter School, 7800 Good Luck Road, Lanham, MD, 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 each 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. § 763.93(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 MDE in November 2006 found that the PGCPS had not provided annual written notifications to parent, teacher and/or employee organizations at each of the three Facilities.
20. Respondents failure to provide the annual notifications at each of the three 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 Paragraph 1 through 20 are incorporated herein by reference.
22. Section 40 C.F.R. § 763.93(a) requires local education agencies to develop an asbestos management plan for each school and shall submit the plan to the Agency designated by the Governor.
23. Inspections conducted by MDE in November 2006 found that the PGCPS had not developed and submitted an asbestos management plan for Excel Academy Public Charter School, Potomac Public Charter School, or Turning Point Academy Public Charter School.
24. Based on currently available information, EPA concludes that the Respondent failed to comply with the asbestos management plan requirements of 40 C.F.R. § 763.93(a) at each of the three Facilities.
25. Respondent's failure to develop an asbestos management plan for each school and submit the management plan for each of the three Facilities is a violation of 40 C.F.R.

§ 763.93(a) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT III

26. The allegations contained in paragraphs 1 through 25 are incorporated herein by reference.
27. 40 C.F.R. § 763.85(a) requires that LEAs inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable asbestos containing building materials (ACBM), unless excluded under 40 C.F.R. § 763.99(a).
28. Pursuant to 40 C.F.R. § 763.99(a)(7), LEAs are not required to perform inspections under 40 C.F.R. § 763.85(a) if an architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building, or, to the best of his or her knowledge, no ACBM was used as a building material in the school building.
29. Inspections conducted by MDE in November 2006 found that PGCPS did not have any records showing that it had inspected Excel Academy Public Charter School, Turning Point Academy Public Charter School, or Potomac Public Charter School, for the location of any ACBM, nor did it have any signed statements certifying that no ACBM was specified or used as a building material in those school buildings.
30. Respondent's failure to inspect the Excel Academy Public Charter School, Turning Point Academy Public Charter School and Potomac Public Charter School for ACBM, and its

inability to produce signed statements certifying that ACBM was not specified or used at any of these three school buildings, is a violation of 40 C.F.R. § 763.85(a) and Section 207(a)(1) of TSCA, 15 U.S.C. §2647(a)(1).

#### **IV. Settlement Recitation**

31. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that the 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)(c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of eight thousand five hundred dollars (\$8,500) is appropriate.
32. 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.
33. Respondent certifies that it has spent two thousand five hundred dollars (\$2,500) since

MDE's November 2006 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 two thousand five hundred dollars (\$2,500) of the civil penalty assessed against the Respondent.

34. Respondent consents to the assessment of eight thousand five hundred dollar (\$8,500) civil penalty with a cash component of six thousand (\$6,000) dollars.
35. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of U.S. EPA, Region III, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251-6515 (Fedex and other non-U.S. Postal Service express mail deliveries shall be sent to Mellon Client Service Center, ATTN: Shift Supervisor, Room 0690, Lockbox 371099M, 500 Ross Street, Pittsburgh, PA 15262-0001). All payments made by check also shall reference the above case caption and docket number, TSCA-03-2008-0038. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"). All Automated Clearinghouse or REX payments shall be directed to PNC Bank, ABA No. 051036706, Environmental Protection Agency, Account No. 310006, CTX Format, Transaction Code 22 – checking, 808 17<sup>th</sup> Street NW, Washington DC 20074. At the

Transaction Code 22 – checking, 808 17<sup>th</sup> Street NW, Washington DC 20074. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Carolyn Bernota, Case Development Officer (3WC32), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources*

*Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### **V. Reservation of Rights**

37. 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.

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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 eight thousand five hundred dollars (\$8,500) but that the cash component of that civil penalty will be six thousand (\$6,000) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), two thousand five hundred dollars (\$2,500) of the 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.

11/16/07  
Date

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

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