

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

2008 SEP 19 PM 1:36

U.S. EPA, REGION IX
REGIONAL HEARING OFFICE

In the matter of:) Docket No. **TSCA-09-2008-0006**
) **CONSENT AGREEMENT**
Challenge School, Inc.) and
) **FINAL ORDER PURSUANT TO**
) **SECTIONS 22.13 AND 22.18**
Respondent.)
_____)

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent **Challenge School, Inc.** doing business as Challenge Charter School (hereafter "**Respondent**") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 207 of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (hereinafter referred to as "TSCA" or the "**Act**"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. This proceeding involves the Asbestos Hazard Emergency Response Act ("**AHERA**"), also known as Title II of TSCA, and the regulations promulgated thereunder. Section **203(b)** of TSCA, 15 U.S.C. § 2643(b), required the Administrator of EPA to, among other things, promulgate regulations prescribing procedures for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency ("**LEA**"). Section **203(i)** of TSCA, 15 U.S.C. § 2643(i), required the Administrator of EPA to, among other things, promulgate regulations requiring each LEA to develop and implement an asbestos management plan for school buildings under its authority. These regulations are codified
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at 40 C.F.R. Part 763, Subpart E (the “**Subpart E regulations**”).

3. Section 763.85(a)(2) of the Subpart E regulations states that any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a)(3) and (4) of section 763.85 prior to use as a school building, and that in the event that emergency use of an uninspected building as a school building is necessary, such buildings shall be inspected within 30 days after commencement of such use. Section 763.93(g)(2) of the Subpart E regulations provides that each LEA shall maintain in its administrative office a complete, updated copy of a management plan for each school under its administrative control or direction. 40 C.F.R. § 763.93(g)(2). Section 763.93(g)(3) of the Subpart E regulations provides that each school shall maintain in its administrative office a complete, updated copy of the management plan for that school. 40 C.F.R. § 763.93(g)(3).

4. Sections 207(a)(1) and 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), provides that any LEA that fails to conduct an inspection, or fails to develop a management plan, pursuant to regulations under Section 203(i) of TSCA, 15 U.S.C. § 2643(i), is liable for a civil penalty. Section 207(a) of TSCA, 15 U.S.C. §§ 2647(a), the Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a civil penalty of (1) not more than \$ 5,000 for each day during which a violation continues, for violations on or before January 30, 1997; (2) not more than \$ 5,500 for each day during which a violation continues, for violations after January 30, 1997 but on or before March 15, 2004; and (3) not more than \$ 6,500 for each day during which a violation continues, for violations after March 15, 2004.

5. Section 207(a) of TSCA, 15 U.S.C. § 2647(a), further provides that any civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the

case of civil penalties assessed and collected under Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation(s), and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. Section 207(a) states that any civil penalty collected shall be used by the LEA to comply with TSCA Title II, with any portion remaining unspent to be deposited into the Asbestos Trust Fund, established pursuant to Section 5 of the Asbestos Hazard Emergency Response Act of 1986, codified at 20 U.S.C. § 4022. In addition, Section 207(c) of TSCA, 15 U.S.C. § 2647(c), requires EPA to consider the significance of the violation, the culpability of the violator, including any history of previous TSCA violations, the ability of the violator to pay the penalty, and the ability of the violator to continue to provide educational services to the community.

B. AUTHORITY AND PARTIES

6. Respondent holds a charter for **Challenge Charter School**, which is an Arizona Charter school. Arizona Charter schools are public, state-funded schools constituted within the state of Arizona pursuant to the Arizona Charter School Law of 1994. See Arizona Revised Statutes Education Code §15-181 to §15-189. Arizona Charter schools contract with the Arizona State Board of Education, the Arizona State Board for Charter Schools, or a district to provide an education service.

7. The authority to take action under Section 207 of TSCA, 15 U.S.C. § 2647, is vested in the Administrator of EPA (“Administrator”). By EPA Delegation Order Number 12-2-A, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under TSCA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number R9

1260.06A dated May 19, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

C. COMPLAINANT'S ALLEGATIONS

8. Respondent began operating the **Challenge Charter School** on or about **1998**.

Respondent owns, leases, or otherwise uses, at the minimum, one (1) "school building," as defined in Section 202(13) of TSCA Title II, 15 U.S.C. § 2642(13), and in 40 C.F.R. §§ 763.83, located at **5801 W. Greenbriar Dr., Glendale, Arizona**. Respondent is a "Local Educational Agency" ("**LEA**"), as defined in Section 202(7) of TSCA Title II, 15 U.S.C. § 2642(7), and in 40 C.F.R. §§ 763.83.

9. Sections 203(i) and 205(d) of TSCA Title II, 15 U.S.C. § 2643(i) and 2645(d), require that Respondent, prior to using a building as a school after October 12, 1988, conduct an inspection and have developed a valid asbestos management plan. Section 207(a)(3) of TSCA Title II, 15 U.S.C. § 2647(a)(3), and 40 C.F.R. § 763.97(a), make it unlawful for Respondent to fail to conduct such inspections and develop such an asbestos management plan, and provide that each separate failure to comply with respect to a single school building constitutes a violation of Section 207(a)(3) of TSCA Title II. If a signed statement of an architect has been submitted to EPA pursuant section 763.99(f), 40 C.F.R. § 763.99(a)(7), then the LEA is not required to perform an inspection.

10. On April 4, 2007, EPA investigators inspected the **Challenge Charter School**, and Respondent was unable to present an AHERA asbestos management plan. In a letter dated November 6, 2007, Paula Bisson of the EPA Region 9 Toxics Office requested to see a copy of Respondent's AHERA asbestos management plans within 30 days. As of November 6, 2007,

Respondent had a signed statement of an architect but Respondent had not developed an asbestos management plan for **Challenge Charter School**.

12. Respondent violated Section 207(a)(3) of TSCA Title II, 15 U.S.C. § 2647(a)(3), by failing to develop an asbestos management plan, pursuant to Section 203(i) of TSCA Title II, 15 U.S.C. § 2643(i), and regulations thereunder at 40 C.F.R. Part 763, Subpart E, for the school building referenced in Paragraph 8 above.

D. RESPONDENT'S ADMISSIONS

13. To avoid the disruption of orderly educational activities and the expense of protracted and costly litigation, Respondent, in accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO, including but not limited to its right under Section 16(a)(2)(A) of TSCA to request a hearing; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. COMPLIANCE WITH AHERA

14. AHERA and the AHERA Subpart E regulations specify the steps which must be taken to evaluate whether a school building contains or is assumed to contain asbestos-containing building material (“**ACBM**”). When a LEA has properly determined that no buildings in a school contain **ACBM**, compliance by the LEA with AHERA and the AHERA Subpart E regulations include:

(A) **Development and updating of management plan.** The management plan shall include: (1) a list of the name and address of each school building. For each school
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building, a statement as specified by 40 C.F.R. § 763.93(e)(1). For each school building that qualifies and the LEA has a signed statement as specified by 40 C.F.R. § 763.99(a)(7), the applicable statement specified by 40 C.F.R. § 763.93(e)(1) would be that the building does not contain ACBM; (2) the name, address, and telephone number of a person designed under 40 C.F.R. § 763.84 to ensure that the duties of Respondent, as the LEA, are carried out (the “**Designated Person**”), and the course name, and the dates and number of hours of training taken by that person to carry out the duties; (3) a dated copy of each year’s annual notification of the AMP’s availability to workers and building occupants, or their legal guardians, (including parents, teachers and employees), along with a description of the steps taken to effect the notification; (4) a true and correct statement, signed by the Designated Person which certifies that the general LEA responsibilities, as stipulated by 40 C.F.R. § 763.84, have been met or will be met; (5) The name of each consultant that contributed to the management plan and the applicable statement that each such consultant is accredited, as required by 40 C.F.R. § 763.93(e)(12). If required by Respondent, pursuant to 40 C.F.R. § 763.93(f), the management plan may also include a statement signed by an accredited management plan developer that such a person has prepared or assisted in the preparation of the management plan or has reviewed such plan, and that such plan is in compliance with 40 C.F.R. 763, Subpart E.

(B) Identification and training for Designated Persons identified by the Respondent, as required by 40 C.F.R. § 763.84(g)(1). Training for the Designated Person shall be in accordance with the training requirements listed in 40 C.F.R. § 763.84(g)(2).

(C) Maintenance of a complete copy of the management plan for each school in Respondent’s administrative office and in each school administrative office, as required by 40 C.F.R. § 763.93(g)(2) and (3). The management plan shall be available to representatives of EPA and the State, the public, including teachers, other school personnel, and their representatives, and parents without cost or restriction.

(D) Notifications: Written notification to parent, teacher and employee organizations of the availability of the management plan and a description of the steps used to make such notification, as required by 40 C.F.R. § 763.93(g)(4), and subsequent notification to these organizations at least once each school year.

Additional requirements apply to LEA's with school buildings that contain, or are assumed to contain, ACBM.

F. RESPONDENT'S CERTIFICATION

15. Respondent hereby certifies that currently all areas of **Challenge Charter School** fall within areas excluded under section 763.99, 40 C.F.R. § 763.99. In executing this CAFO, Respondent certifies that it has complied with AHERA and the AHERA Subpart E regulations at **Challenge Charter School**, and all other facilities under its control which are subject to AHERA requirements. Respondent certifies that all accounting of the costs incurred by Respondent in complying with AHERA and the AHERA Subpart E regulations provided to EPA are and will be true and accurate.

G. CIVIL ADMINISTRATIVE PENALTY

16. A. Respondent consents to the assessment of a penalty in the amount of **EIGHT HUNDRED DOLLARS (\$800)**, as specified in this Paragraph as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO. Complainant and Respondent agree to defer actual payment of the civil penalty described in this paragraph pending compliance by Respondent with the terms of Section I.F of this CAFO.

B. The Respondent shall pay the full civil penalty amount in Paragraph **16.A**, unless payment is waived in whole or in part pursuant to this Paragraph **16.B**. Within **fifteen (15) days** of the effective date of this CAFO, Respondent shall provide to EPA an accounting of the costs incurred by Respondent in complying with Title II of TSCA, 15 U.S.C. §§ 2641-2656, at the *In re: Challenge School, Inc., AHERA 2008, page 7*

schools named in Paragraph 6, including but not limited to a copy of the invoice(s) with an attached copy of the cancelled check for each project and a copy of the contract(s) for services. EPA will inform Respondent in writing of the EPA-approved costs of compliance. 1. If the EPA approved costs of compliance are equal to, or exceed the civil penalty amount in Paragraph 16.A, the costs of compliance shall represent full payment of the penalty, and no further payment is necessary. 2. If the costs of compliance are less than the civil penalty amount in Paragraph 16.A, Respondent shall pay the amount equal to the civil penalty amount minus the EPA approved costs of compliance, in lieu of the civil penalty amount.

17. Respondent shall pay any civil penalty amount required by Paragraph 16.B. within **fifteen (15) calendar days** of the date Respondent is required to provide to EPA the final accounting of costs. Payment shall be made by cashier's or certified check, payable to the order of the "Treasurer of the United States of America." The check shall state on the reverse side, "For Deposit Into the Asbestos Trust Fund, 20 U.S.C. § 4022" and shall be accompanied by a cover letter identifying this CAFO, the docket number, and stating that payment is being made pursuant to Section F of this Agreement. Respondent shall mail the check and the letter by Certified Mail, Return Receipt Requested, to the following address:

**US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Attention: Asbestos Trust Fund
PO Box 979077
St. Louis, MO 63197-9000**

When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

- b) Ron Tsuchiya
Toxics Office
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

18. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that payment is late. Upon Complainant's written demand, payment shall immediately become due and payable.

19. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

20. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision

of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act, rules promulgated thereunder, and other Federal, state or local laws or statutes.

21. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

22. Each party shall bear its own costs, fees, and disbursements in this action.

23. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

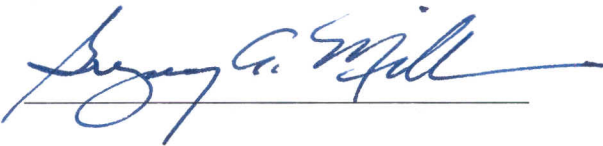
24. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

26. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind

that party to it.


CHALLENGE SCHOOL, INC.:

Date: 8.12.08 By: 

Name: Gregory A. Miller

Title: CEO

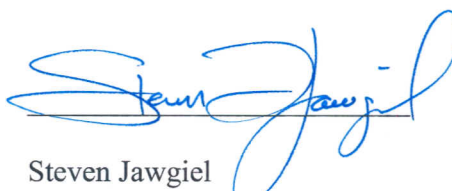
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: Sept 16, 2008 By: 
ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall comply with the terms set forth in the Consent Agreement and pay the full civil penalty amount as described in the Consent Agreement, unless waived by EPA in whole or in part pursuant to Paragraph 16, in accordance with the terms set forth in the Consent Agreement.

Date: 09/19/08



Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R §§ 22.13 and 22.18 (Docket No. TSCA-9-2008-⁰⁹ 0006) against the Challenge School, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Gregory Miller
CEO
Challenge School, Inc.
5801 W. Greenbriar Drive
Phoenix, AZ 85308

Certified Mail No. 7007 0710 0003 6239 9158

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
United States Environmental Protection Agency, Region IX

Date

Sept. 23, 2008



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7007 0710 0003 6239 9158
Return Receipt Requested

Re: TSCA-09-2008- 0006

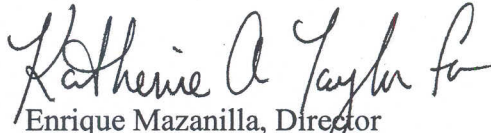
Date: SEP 19 2008

Mr. Gregory Miller
CEO
Challenge School, Inc.
5801 W. Greenbriar Drive
Phoenix, AZ 85308

Dear Mr. Miller:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with Margaret Alkon of the EPA Region 9 Office of Regional Counsel. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case. If you have any questions, please contact Ron Tsuchiya at (415) 947-4168.

Sincerely,


Enrique Mazanilla, Director
Communities and Ecosystems Division

Enclosure