

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

IN RE:

Bradley Hills Presbyterian Church
6601 Bradley Boulevard
Bethesda, MD 20817

Docket No: TSCA-03-2011-0210

Consent Agreement

Respondent

2011 SEP 27 PM 4: 29
EPA REGION III PHILA, PA
EPA OFFICE ASSISTANT CLERK

RECEIVED

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, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Bradley Hills Presbyterian Church. This CA includes the assessment of a civil penalty against Bradley Hills Presbyterian Church ("Respondent"), because it is a local education agency liable for violations which occurred at the Bradley Hills Presbyterian Church Nursery School located at 6601 Bradley Boulevard, Bethesda, MD 20817 (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 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 Facility is 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 nine thousand eight hundred twenty four dollars (\$9,824) since Maryland Department of the Environment's (MDE) June 9, 2009 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 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, Bradley Hills Presbyterian Church, 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, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of AHERA.

15. The Facility, Bradley Hills Presbyterian Church Nursery School, located at 6601 Bradley Boulevard, Bethesda, MD 20817 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 that at least once every 3 years after a management plan is in effect, each LEA shall conduct a reinspection of all friable and non-friable known or assumed asbestos containing building materials ("ACBM") in each school building that they lease, own, or otherwise use as a school building.

19. On June 9, 2009, MDE's duly authorized inspector conducted an inspection at the Facility.

20. During the inspection, MDE's inspector discovered that the LEA has failed to conduct 3-year reinspections of the school building since 2004 as required by the regulations.

21. By failing to conduct 3-year reinspections, the Respondent violated the requirements of 40 C.F.R. § 763.85(b)(1).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by

reference.

23. 40 C.F.R. § 763.93(g)(4) states, in pertinent or part, that "...at least once each school year, the [LEA] shall notify in writing, the parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organization, and a dated copy of the notification."

24. During the June 9, 2009 inspection, the MDE inspector found that the Respondent failed to provide, at least once each school year, written notification of the availability of the Facility's management plan, to parent, teacher, and employee organizations.

25. By failing to provide the annual written notification, Respondent violated 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

26. 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 seven thousand five hundred dollars (\$7,500) is appropriate.

27. 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.

28. Respondent certifies that it has spent nine thousand eight hundred twenty four dollars (\$9,824) since MDE's June 9, 2009 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 seven thousand five hundred dollars (\$7,500) of the civil penalty assessed against the Respondent.

29. Respondent consents to the assessment of a seven thousand five hundred dollars (\$7,500) civil penalty with a cash component of zero dollars (\$0).

V. Reservation of Rights

30. 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

31. 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.

VII. Execution

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:

9/17/11
Date

David E. Gray
Dr. David E. Gray
Pastor/Head of Staff
Bradley Hills Presbyterian Church

For Complainant:

9/19/11
Date

Christine E. Convery
Christine E. Convery,
Enforcement Officer
U.S. EPA, Region 3

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

9/26/11
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Bradley Hills Presbyterian Church : Docket No: TSCA-03-2011-0210
6601 Bradley Boulevard :
Bethesda, MD 20817 :
 : Consent Agreement
 :
Respondent :

FINAL ORDER

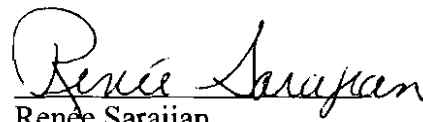
The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

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 seven thousand five hundred dollars (\$7,500), 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), the seven thousand five hundred dollar (\$7,500) 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.

9/27/11
Date


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



**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

IN RE:

:
:
:

Docket No. TSCA-03-2011-0210

Bradley Hills Presbyterian Church
6601 Bradley Boulevard
Bethesda, MD 20817

:
:
:
:

Consent Agreement and
Final Order

Respondent

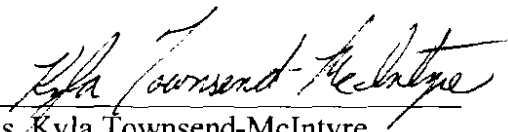
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029 and that true and correct copies were served regular U.S. Mail upon the following person:

Dr. David E. Gray, Pastor/Head of Staff
Bradley Hills Presbyterian Church
6601 Bradley Boulevard
Bethesda, MD 20817

Date: _____

09/27/2011


Ms. Kyla Townsend-McIntyre
Pesticides/ Asbestos Enforcement Officer
U.S. EPA - Region III