



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
November 12, 2013

LC-8J
REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7009 1680 0000 7668 1896
RETURN RECEIPT REQUESTED

Perry Public Schools
ATTN: Michael Foster
2665 West Britton Road
Perry, Michigan 48872

Consent Agreement and Final Order in the Matter of
Perry Public School. Docket No. TSCA-05-2014-0001

Dear Mr. Foster:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 12, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$860.00 is to be paid in the manner described in paragraphs 21 and 22. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by December 12, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxic Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Perry Public Schools
Perry, Michigan

Respondent



Docket No. TSCA-05-2014-0001

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2601

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2647(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Perry Public Schools, located at 2665 West Britton Road, Perry, Michigan 48872.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Asbestos Hazard Emergency Response Act (AHERA) was signed into law on October 22, 1986. Under AHERA, EPA was directed to promulgate regulations which would require Local Education Agencies (LEAs) to address asbestos problems in their school buildings. In accordance with the statute, the regulations issued on October 30, 1987 (FR 41826), LEAs are to inspect school buildings for asbestos containing building materials (ACBMs), develop management plans, implement response actions, develop operations and maintenance, and repair plans whenever any friable ACBM is present or assumed to be present in a building that the LEA leases, owns, or otherwise uses as a school building.

10. The Respondent is an LEA, as defined in Section 202(7) of TSCA, 15 U.S.C. § 2542(7), and 40 C.F.R. § 763.83.

11. The Respondent owns, leases or otherwise uses a building located at 2775 Britton Road, Perry, Michigan.

12. The building referred to in paragraph 5, above, is a school building as defined in Section 202(13) of TSCA, U.S.C. § 2642(13), and 40 C.F.R. § 763.83.

13. Section 215 of AHERA, as amended, [§ 207(a)(4)], prohibits the performance of operations and maintenance activities unless conducted pursuant to AHERA Sections 40 C.F.R. § 763.91 and 92(a)(2). These provisions concern operations and maintenance requirements and the required 2 and 14 hour training of maintenance and custodial workers (40 C.F.R. § 763.91(a)(1) and (2), respectively) who conduct activities that will result in the disturbance of ACBM.

14. 40 C.F.R. § 763.91 and Section 203 of TSCA, 15 U.S.C. § 2643, requires that each LEA develop and implement an operations and maintenance, and repair plan whenever any friable asbestos-containing building material is present or assumed to be present in a building that the LEA owns, or otherwise uses as a school building.

15. Section 209(a) of TSCA, 15 U.S.C. § 2647(a), and 40 C.F.R. § 763.91(a) authorizes the EPA Administrator to assess a civil penalty of up to \$6,700 for each violation of Section 209(a) of TSCA.

Factual Allegations and Alleged Violations

16. On May 3, 2012, an employee directed several students to conduct a renovation project in a classroom of the Perry Middle School. The renovation project included the removal of carpet and 9x9 asbestos-containing floor tile from the classroom.

17. The LEA failed to develop and implement an operations and maintenance, and repair plan prior to disturbing ACBMs present in the school building, as required by 40 C.F.R. § 763.91(a)(1).

18. The LEA failed to ensure that the procedures described in 40 C.F.R. § 763.91(d) to protect building occupants following the operations and maintenance activities disturbing friable ACBMs were followed.

19. The LEA is failed to ensure, prior to the implementation of the operations and maintenance provisions of the management plan, that all members of its maintenance and custodial staff who may work in a building that contains ACBM receive awareness training of at least 2 hours, whether or not they are required to work with ACBM, as required by 40 C.F.R. § 763.92(a)(1).

Civil Penalty

20. Pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), Complainant determined that an appropriate civil penalty to settle this action is \$860. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, any history of such prior violations, and the degree of culpability. Complainant considered EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act*, dated January 31, 1989.

21. Within 30 days after the effective date of this CAFO, Respondent must pay a \$860 civil penalty for the TSCA violations by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

U.S. EPA
Headquarters Accounting Operations Branch
Attention: Asbestos Trust Fund
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251

22. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Please state on the reverse side of the cashier's check, "**For Deposit into the Asbestos Trust Fund, 20 U.S.C. § 4022**". Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jose DeLeon (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

23. This civil penalty is not deductible for federal tax purposes.

24. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

25. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

26. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

27. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

28. This CAFO does not affect Respondent's responsibility to comply with the Asbestos-in-Schools Rule under AHERA and other applicable federal, state, and local laws.

29. Respondent certifies that it is complying with the Asbestos-in-Schools Rule under AHERA.

30. The terms of this CAFO bind Respondent, and his successors and assigns.

31. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

32. Each party agrees to bear its own costs and attorney's fees in this action.

33. This CAFO constitutes the entire agreement between the parties.

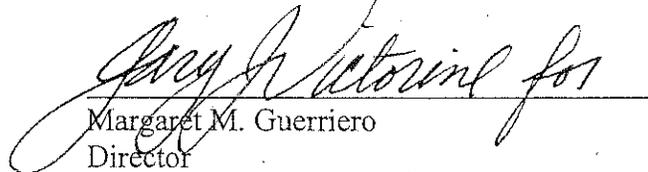
Perry Public Schools, Respondent

9/21/2013
Date


Michael Foster
Interim Superintendent
Perry Public Schools

United States Environmental Protection Agency, Complainant

11/1/2013
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

**Perry Public Schools
Perry, Michigan**

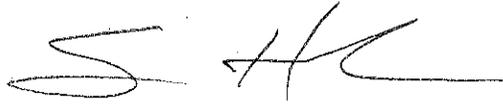
Docket No. TSCA-05-2014-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-4-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Perry School, was filed on November 12, 2013, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 1896 to:

Perry Public Schools
ATTN: Michael Foster
2665 West Britton Road
Perry, Michigan 48872

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jose Deleon, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2014-0001

