

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2025-0021</b>
	)	
<b>Scranton School District</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Scranton, Pennsylvania,</b>	)	<b>Under Section 207(a) of the</b>
	)	<b>Toxic Substances Control Act, 15 U.S.C.</b>
<b>Respondent.</b>	)	<b>§ 2647(a)</b>
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**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 207 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2647, and Sections 22.13(b) and 22.18(b)(2) and (3) of 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, by lawful delegation, the Regional Administrator of the U.S. Environmental Protection Agency, Region 5 (“EPA”), or, when a Regional Administrator has not been appointed, the Acting Regional Administrator of EPA, Region 5.

3. Respondent is the Scranton School District (“the District” or “Respondent”).

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. This CAFO addresses alleged violations by Respondent of Subchapter II of TSCA,

known as the Asbestos Hazard Emergency Response Act (hereinafter “TSCA-AHERA”), 15 U.S.C. §§ 2641 to 2656, and the federal regulations implementing TSCA-AHERA as set forth at 40 C.F.R. Part 763, Subpart E. This CAFO resolves Complainant’s civil claims against Respondent arising from the violations alleged herein.

7. 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**

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

9. 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, and waives all rights to file a petition for judicial review in the United States Court of Appeals pursuant to Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3), as provided by Section 207(a) of TSCA, 15 U.S.C. § 2647(a), regarding any term of settlement set forth in this CAFO. In addition, by signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

10. Within ninety (90) days of the effective date of this CAFO, Respondent shall submit documents proving that it is in compliance with Section 203 of TSCA-AHERA, 15 U.S.C. § 2643, and the regulations at 40 C.F.R. Part 763, Subpart E, with respect to all of its school buildings, whether named or unnamed in the instant CAFO. The information provided by Respondent as proof of its compliance shall include, at a minimum, information sufficient to

prove that each of Respondent's asbestos management plans contains all twelve (12) elements required under 40 C.F.R. § 763.93(e), and also shall include information sufficient to prove that Respondent is in compliance with all record-keeping requirements of 40 C.F.R. § 763.94, as summarized in Attachment 1 to this CAFO. All documents submitted to demonstrate compliance with Section 203 of TSCA-AHERA, 15 U.S.C. § 2643, and the regulations at 40 C.F.R. Part 763, Subpart E, must be clearly marked for each school, and must identify the element(s) required under 40 C.F.R. § 763.93(e) to which the document is responsive. In addition, Respondent shall include a certification of its compliance with Section 203 of TSCA-AHERA, 15 U.S.C. § 2643, and the regulations at 40 C.F.R. Part 763, Subpart E, along with this submittal.

#### **Statutory and Regulatory Background**

11. Complainant has determined that Respondent violated requirements of TSCA-AHERA and the federal regulations implementing TSCA-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.

12. The Asbestos Hazard Emergency Response Act (TSCA-AHERA), 15 U.S.C. §§ 2641-2656, was enacted by Congress to provide for the establishment of federal regulations which require inspections for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner; to mandate safe and complete periodic re-inspection of school buildings following response actions, where appropriate; and to require EPA to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger. 15 U.S.C. § 2641(b). In passing TSCA-AHERA,

Congress also directed EPA to promulgate regulations that require local educational agencies to, among other things, inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. 15 U.S.C. § 2643.

13. In accordance with TSCA-AHERA, EPA promulgated the Asbestos-Containing Materials in Schools Rule (“the Rule”) at 40 C.F.R. Part 763, Subpart E (§§ 763.80 – 763.99) on October 30, 1987 (*52 Fed. Reg. 41846* (Oct. 30, 1987)). The Rule requires local educational agencies to identify friable and nonfriable asbestos-containing material (ACM) in public and private elementary and secondary schools by visually inspecting school buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in the rule. The Rule requires local educational agencies to develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and to submit the plan to an agency designated by the Governor of the State in which the local educational agency is located, and complete implementation of the plans in a timely fashion. In addition, local educational agencies are required to use persons who have been accredited to conduct inspections and re-inspections, to develop management plans, or to perform response actions. The Rule also includes recordkeeping requirements. Local educational agencies may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties. 40 C.F.R. §§ 763.93(a) – (i).

14. Section 11 of TSCA, 15 U.S.C. § 2610, provides EPA with authority to conduct inspections upon the presentation of appropriate credentials and written notice.

15. Section 202(4) of TSCA-AHERA, 15 U.S.C. § 2642(4), and the Rule at 40 C.F.R. § 763.83, define the term “asbestos-containing material” as any material which contains more than one percent (1%) asbestos by weight.

16. The Rule at 40 C.F.R. § 763.83, defines the term “asbestos-containing building material” (ACBM) as surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

17. Section 202(7) of TSCA-AHERA, 15 U.S.C. § 2642(7), and the Rule at 40 C.F.R. § 763.83, define the term “local educational agency” or “local education agency” as, *inter alia*, any local educational agency as defined in 20 U.S.C. § 7801; the latter statute in turn defines “local educational agency” as 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 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, and as such, is responsible for ensuring that the Facilities are in compliance with the requirements of AHERA.

18. Section 202(9) of TSCA-AHERA, 15 U.S.C. § 2642(9), and the Rule at 40 C.F.R. § 763.83, define the term “Non-profit elementary or secondary school” as any elementary or secondary school (as defined in Section 7801 of Title 20) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

19. Section 203(f) of TSCA-AHERA, 15 U.S.C. § 2643(f), and the Rule at 40 C.F.R. § 763.83, define the term “operations and maintenance program” (“O&M program”) as a program

of work practices to maintain friable ACBM in good condition, ensure clean-up of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

20. Section 202(11) of TSCA-AHERA, 15 U.S.C. § 2642(11), and the Rule at 40 C.F.R. § 763.83, define the term “response action” as a method (including removal, encapsulation, enclosure, repair, operations and maintenance) that protects human health and the environment from friable ACBM. Such methods include methods described in chapters 3 and 5 of the EPA’s “Guidance for Controlling Asbestos- Containing Materials in Buildings.”

21. Section 202(12) of TSCA-AHERA, 15 U.S.C. § 2642(12), and the Rule at 40 C.F.R. § 763.83, define the term “school” as any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 2854).

22. Section 202(13) of TSCA-AHERA, 15 U.S.C. § 2642(13), and the Rule at 40 C.F.R. § 763.83, define the term “school building” as: (1) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food; (2) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education; (3) any other facility used for the instruction of students or for the administration of educational or research programs; and, (4) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (1), (2) or (3), above; (5) any portico or covered exterior hallway or walkway; or (6) any exterior portion of a mechanical system used to condition interior space.

23. The regulation at 40 C.F.R. § 763.99 provides that a local educational agency shall not be required to perform an inspection under 40 C.F.R. § 763.85(a) in any sampling area as

defined in 40 C.F.R. § 763.103 or homogeneous area of a school building where: (1) an accredited inspector has determined that, based on sampling records, friable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987; (2) an accredited inspector has determined that, based on sampling records, nonfriable ACBM was identified in that homogeneous or sampling area during an inspection conducted before December 14, 1987; (3) based on sampling records and inspection records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987 in substantial compliance with 40 C.F.R. § 763.85(a), which for purposes of this section means in a random manner and with a sufficient number of samples to reasonably ensure that the area is not ACBM; (4) the lead agency responsible for asbestos inspection in a State that has been granted a waiver from 40 C.F.R. § 763.85(a) has determined that, based on sampling records and inspection records, no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled before December 14, 1987, in substantial compliance with 40 C.F.R. § 763.85(a); (5) an accredited inspector has determined that, based on records of an inspection conducted before December 14, 1987, suspected ACBM identified in that homogeneous or sampling area is assumed to be ACM; (6) based on inspection records and contractor and clearance records, an accredited inspector has determined that no ACBM is present in the homogeneous or sampling area where asbestos removal operations have been conducted before December 14, 1987; or (7) 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

building.

**General Allegations**

24. Paragraphs 1 through 23 are incorporated by reference as if set forth in full herein.

25. The Scranton School District (Respondent) is a public school district with an administrative office located at 425 North Washington Avenue, in the City of Scranton, Lackawanna County, Pennsylvania.

26. Respondent is a “Local Educational 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 (“local education agency”).

27. During calendar years 2019 to 2022, Respondent owned and managed fifteen (15) school buildings that contained asbestos-containing building material (ACBM), as well as four (4) school buildings with an asbestos exclusion statement under 40 C.F.R. § 763.99. These nineteen (19) school buildings were located at the addresses listed in Table 1, below:

**Table 1: School Buildings Owned and Managed by Scranton School District**

<b>No.</b>	<b>School Name</b>	<b>Address</b>	<b>Exclusion Statement</b>
1	George Bancroft Elementary	1002 Albright Avenue, Scranton, PA	No Exclusion Statement.
2	Issac Tripp Elementary	1000 N Everett Avenue, Scranton, PA	Architect Letter dated in 2016 in accordance with 40 C.F.R. § 763.99(7).
3	John Adams Elementary	927 Capouse Avenue, Scranton, PA	No Exclusion Statement.
4	John F. Kennedy Elementary	2200 Prospect Avenue, Scranton, PA	Architect Letter dated in 2016 in accordance with 40 C.F.R. § 763.99(7).
5	McNichols Educational Plaza	1111 South Irving Avenue, Scranton, PA	No Exclusion Statement.
6	Neil Armstrong Elementary	1500 N Lincoln Avenue, Scranton, PA	No Exclusion Statement.
7	William Prescott Elementary	840 Prescott Avenue, Scranton, PA	No Exclusion Statement.
8	Robert Morris Elementary	1824 Boulevard Avenue, Scranton, PA	No Exclusion Statement.

9	Charles Sumner Elementary	372 N Sumner Avenue, Scranton, PA	No Exclusion Statement.
10	John G. Whittier Elementary (Annex)	638 Hemlock Street, Scranton, PA	No Exclusion Statement.
11	John G. Whittier Elementary	700 Orchard Street, Scranton, PA	Architect Letter dated in 2016 in accordance with 40 C.F.R. § 763.99(7).
12	Frances Willard Elementary	1100 Eynon Street, Scranton, PA	No Exclusion Statement.
13	Northeast Scranton Intermediate	721 Adams Avenue, Scranton, PA	No Exclusion Statement.
14	South Scranton Intermediate	355 Maple Street, Scranton, PA	No Exclusion Statement.
15	West Scranton Intermediate	1401 Fellows Street, Scranton, PA	No Exclusion Statement.
16	Scranton High	63 Munchak Way, Scranton, PA	Architect Letter dated in 2016 in accordance with 40 C.F.R. § 763.99(7).
17	West Scranton High	1201 Luzerne Street, Scranton, PA	No Exclusion Statement.
18	Administratives Building	425 N Washington Avenue, Scranton, PA	No Exclusion Statement.
19	Memorial Stadium	825 Providence Road, Scranton, PA	No Exclusion Statement.

28. At all times relevant to this CAFO, each of the nineteen (19) school buildings referenced in paragraph 27 and Table 1, above, was a “school” as that term is defined at Section 202(12) of TSCA-AHERA, 15 U.S.C. § 2642(12), and 40 C.F.R. § 763.83.

29. At all times relevant to this CAFO, each of the nineteen (19) school buildings referenced in paragraph 27 and Table 1, above, was a “Non-profit elementary or secondary school” as that term is defined at Section 202(9) of TSCA-AHERA, 15 U.S.C. § 2642(9).

30. At all times relevant to this CAFO, each of the nineteen (19) school buildings referenced in paragraph 27 and Table 1, above, was a “school building” as that term is defined at Section 202(13) of TSCA-AHERA, 15 U.S.C. § 2642(13), and 40 C.F.R. § 763.83.

31. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), among other things, makes it unlawful for any person to fail to comply with any requirement of TSCA, or any rule promulgated under TSCA, including Subsection II of TSCA (TSCA-AHERA) and any rule promulgated thereunder.

32. Section 207(a)(3) of TSCA-AHERA provides, *inter alia*, that any local educational agency which fails to develop an asbestos management plan pursuant to regulations under Section 2643(i) of TSCA-AHERA, 15 U.S.C. § 2643(i), is liable for a civil penalty of not more than \$13,508 for each day during which the violation continues.

33. Section 207 of TSCA-AHERA, 15 U.S.C. § 2647, also provides that any civil penalty for the violations enumerated in that section of the statute 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.

34. Section 207 of TSCA-AHERA, 15 U.S.C. § 2647, provides that, for purposes of the civil penalty provisions of the statute, a “violation” means a failure to comply with respect to a single school building.

### **Count 1 – Failure to Include Necessary Elements in Management Plan**

35. Paragraphs 1 through 34 are incorporated by reference as if set forth in full herein.

36. 40 C.F.R. § 763.93(e) requires that each asbestos management plan shall be developed by an accredited management planner and shall include twelve elements which are summarized in Attachment 1 to this CAFO.

37. Between in or about 2019 and in or about February 2020, for each of the fifteen (15) school buildings listed below, Respondent failed to include element no. 10 (a description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, re-inspections, response actions, and post-response action activities, including periodic reinspection

and surveillance activities that are planned or in progress) and element no. 11 (an evaluation of the resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance and training), which are required to be included in each asbestos management plan by 40 C.F.R. § 763.93(e):

No.	School Name	Address
1	George Bancroft Elementary	1002 Albright Avenue, Scranton, PA
2	John Adams Elementary	927 Capouse Avenue, Scranton, PA
3	McNichols Educational Plaza	1111 South Irving Avenue, Scranton, PA
4	Neil Armstrong Elementary	1500 N Lincoln Avenue, Scranton, PA
5	William Prescott Elementary	840 Prescott Avenue, Scranton, PA
6	Robert Morris Elementary	1824 Boulevard Avenue, Scranton, PA
7	Charles Sumner Elementary	372 N Sumner Avenue, Scranton, PA
8	John G. Whittier Elementary (Annex)	638 Hemlock Street, Scranton, PA
9	Frances Willard Elementary	1100 Eynon Street, Scranton, PA
10	Northeast Scranton Intermediate	721 Adams Avenue, Scranton, PA
11	South Scranton Intermediate	355 Maple Street, Scranton, PA
12	West Scranton Intermediate	1401 Fellows Street, Scranton, PA
13	West Scranton High School	1201 Luzerne Street, Scranton, PA
14	Administrative Building	425 N Washington Avenue, Scranton, PA
15	Memorial Stadium	825 Providence Road, Scranton, PA

38. Respondent’s failure to include element no. 10 and element no. 11 in the asbestos management plan for each of the 15 school buildings identified above constitutes fifteen (15) separate and distinct violations of 40 C.F.R. § 763.93(e) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$13,508 for each day during which each violation continues.

**Count 2 – Failure to Maintain an Updated Copy of the Management Plans for Each School Building in the District Administrative Office**

39. Paragraphs 1 through 34 are incorporated by reference as if set forth in full herein.

40. 40 C.F.R. §§ 763.93(g)(1) and 763.93(g)(2) require that a Local Educational Agency must maintain in its administrative office a complete, updated copy of an asbestos

management plan for each school under its administrative control or direction, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents.

41. Between in or about 2019 and in or about February 2020, Respondent failed to maintain in its administrative office a complete, updated copy of a management plan for each of the nineteen (19) school buildings under its administrative control or direction, referenced in paragraph 27 and identified in Table 1, above, and failed to make the plans available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents.

42. Respondent's failure to maintain in its administrative office a complete, updated copy of a management plan for each of the nineteen (19) schools under its administrative control or direction, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, constitutes nineteen (19) separate and distinct violations of 40 C.F.R. §§ 763.93(g)(1) and 763.93(g)(2) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$13,508 for each day during which each violation continues.

**Count 3 – Failure to Maintain an Updated Copy of the Management Plan In Each School's Administrative Office**

43. Paragraphs 1 through 34 are incorporated by reference as if set forth in full herein.

44. 40 C.F.R. § 763.93(g)(3) requires each school under a Local Educational Agency's authority to maintain in its administrative office a complete, updated copy of the asbestos management plan for that school; to make the asbestos management plans available, without cost

or restriction, to workers before work begins in any area of a school building; and to make the asbestos management plan available, without cost or restriction, for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, within 5 working days after receiving a request for inspection.

45. Between in or about 2019 and in or about February 2020, Respondent failed to maintain in the administrative office of each of the nineteen (19) schools under its authority a complete, updated copy of a management plan for that school, and failed to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, in violation of 40 C.F.R. § 763.93(g)(3).

46. Respondent's failure to maintain in the administrative office of each of its nineteen (19) schools (referenced in paragraph 27 and identified in Table 1, above) a complete, updated copy of the management plan for that school, and to make the plan available without cost or restriction for inspection by representatives of EPA and the State, the public, including teachers, other school personnel and their representatives, and parents, constitutes nineteen (19) separate and distinct violations of 40 C.F.R. § 763.93(g)(3) and Section 207(a)(3) of TSCA-AHERA, 15 U.S.C. § 2647(a)(3), and Respondent is liable for a civil penalty of not more than \$13,508 for each day during which each violation continues.

#### **Civil Penalty**

47. Pursuant to Section 16(a) of TSCA and Section 207 of TSCA-AHERA, 15 U.S.C. §§ 2615(a) and 2647, Complainant determined that an appropriate civil penalty to settle this action is \$40,431. In determining the penalty amount, Complainant considered the significance of the violation; the culpability of the violator, including any history of previous violations under

this chapter; the ability of the violator to pay the penalty; and the ability of the violator to continue to provide educational services to the community. Complainant also considered EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act*. In addition, Section 207 of TSCA-AHERA provides that the court shall order that any civil penalty collected be used by the local educational agency for purposes of complying with this subchapter, and any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by 20 U.S.C. § 4022.

48. Respondent has represented and provided proof that it has spent more than \$40,431 to achieve compliance with TSCA-AHERA and its regulations. In consideration of the expenditures which Respondent has made to achieve compliance, Complainant reduced the penalty by the full amount of these expenditures, resulting in a penalty of zero dollars (\$0).

#### **General Provisions**

49. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [cha.james@epa.gov](mailto:cha.james@epa.gov) (for Complainant), and [jef@KingSpry.com](mailto:jef@KingSpry.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

50. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

52. This CAFO does not affect Respondent's responsibility to comply with TSCA-AHERA and other applicable federal, state and local laws.

53. The terms of this CAFO bind Respondent, its successors and assigns.

54. 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.

55. Each party agrees to bear its own costs and attorneys' fees, in this action.

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

**Scranton School District, Respondent**

Date

5/10/2025

  
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Ty Holmes  
President  
Scranton School District

**United States Environmental Protection Agency, Complainant**

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Anne Vogel  
U.S. EPA Region 5 Administrator  
& Great Lakes National Program Manager  
United States Environmental Protection Agency

**In the Matter of Scranton School District  
Docket No.: TSCA-05-2025-0021**

**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.

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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

## Attachment 1: Asbestos Management Plan Requirements

### **A. Twelve Elements of Asbestos Management Plan (40 C.F.R. § 763.93(e))**

- 1) A list of the name and address of each school building and whether the school building contains friable ACBM, nonfriable ACBM, and friable and nonfriable suspected ACBM assumed to be ACM.
  
- 2) For each inspection conducted before the December 14, 1987:
  - i. The date of the inspection.
  - ii. A blueprint, diagram, or written description of each school building that identifies clearly each location and approximate square or linear footage of any homogeneous or sampling area where material was sampled for ACM, and, if possible, the exact locations where bulk samples were collected, and the dates of collection.
  - iii. A copy of the analyses of any bulk samples, dates of analyses, and a copy of any other laboratory reports pertaining to the analyses.
  - iv. A description of any response actions or preventive measures taken to reduce asbestos exposure, including if possible, the names and addresses of all contractors involved, start and completion dates of the work, and results of any air samples analyzed during and upon completion of the work.
  - v. A description of assessments, required to be made under 40 C.F.R. § 763.88, of material that was identified before December 14, 1987, as friable ACBM or friable suspected ACBM assumed to be ACM, and the name and signature, State of accreditation, and if applicable, accreditation number of each accredited person making the assessments.
  
- 3) For each inspection and reinspection conducted under 40 C.F.R. § 763.85:
  - i. The date of the inspection or reinspection and the name and signature, State of accreditation and, if applicable, the accreditation number of each accredited inspector performing the inspection or reinspection.
  - ii. A blueprint, diagram, or written description of each school building that identifies clearly each location and approximate square or linear footage of homogeneous areas where material was sampled for ACM, the exact location where each bulk sample was collected, date of collection, homogeneous areas where friable suspected ACBM is assumed to be ACM, and where nonfriable suspected ACBM is assumed to be ACM.
  - iii. A description of the manner used to determine sampling locations, and the name and signature of each accredited inspector collecting samples, the State of accreditation, and if applicable, his or her accreditation number.
  - iv. A copy of the analyses of any bulk samples collected and analyzed, the name and address of any laboratory that analyzed bulk samples, a statement that the

laboratory meets the applicable requirements of 40 C.F.R. § 763.87(a) the date of analysis, and the name and signature of the person performing the analysis.

- v. A description of assessments, required to be made under 40 C.F.R. § 763.88, of all ACBM and suspected ACBM assumed to be ACM, and the name, signature, State of accreditation, and if applicable, accreditation number of each accredited person making the assessments.
- 4) The name, address, and telephone number of the person designated under 40 C.F.R. § 763.84 to ensure that the duties of the LEA are carried out, and the course name, and dates and hours of training taken by that person to carry out the duties.
- 5) The recommendations made to the LEA regarding response actions, under 40 C.F.R. § 763.88(d), the name, signature, State of accreditation of each person making the recommendations, and if applicable, his or her accreditation number.
- 6) A detailed description of preventive measures and response actions to be taken, including methods to be used, for any friable ACBM, the locations where such measures and action will be taken, reasons for selecting the response action or preventive measure, and a schedule for beginning and completing each preventive measure and response action.
- 7) With respect to the person or persons who inspected for ACBM and who will design or carry out response actions, except for operations and maintenance, with respect to the ACBM, one of the following statements:
  - i. If the State has adopted a contractor accreditation program under section 206(b) of Title II of the Act, a statement that the person(s) is accredited under such plan.
  - ii. A statement that the LEA used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 206(b) of Title II of the Act or is accredited by an EPA-approved course under section 206(c) of Title II of the Act.
- 8) A detailed description in the form of a blueprint, diagram, or in writing of any ACBM or suspected ACBM assumed to be ACM which remains in the school once response actions are undertaken pursuant to 40 C.F.R. § 763.90. This description shall be updated as response actions are completed.
- 9) A plan for reinspection under 40 C.F.R. § 763.85, a plan for operations and maintenance activities under 40 C.F.R. § 763.91, and a plan for periodic surveillance under 40 C.F.R. § 763.92, a description of the recommendation made by the management planner regarding additional cleaning under 40 C.F.R. § 763.91(c)(2) as part of an operations and maintenance program, and the response of the LEA to that recommendation.
- 10) A description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, reinspections, response actions, and post-response action

activities, including periodic reinspection and surveillance activities that are planned or in progress.

- 11) An evaluation of the resources needed to complete response actions successfully and carry out reinspection, operations and maintenance activities, periodic surveillance and training.
- 12) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:
  - i. If the State has adopted a contractor accreditation program under section 206(b) of Title II of the Act, a statement that the person(s) is accredited under such plan.
  - ii. A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 206(b) of Title II of the Act, or is accredited by an EPA-approved course developed under section 206(c) of Title II of the Act.

**B. Recordkeeping Requirements of Asbestos Management Plans (40 C.F.R. § 763.94)**

- 1) Records required under AHERA shall be maintained in a centralized location in the administrative office of both the school and the local education agency as part of the management plan. For each homogeneous area where all ACBM has been removed, the local education agency shall ensure that such records are retained for 3 years after the next reinspection required under 40 C.F.R. § 763.85(b)(1), or for an equivalent period.
- 2) For each preventive measure and response action taken for friable and nonfriable ACBM and friable and nonfriable suspected ACBM assumed to be ACM, the local education agency shall provide:
  - i. A detailed written description of the measure or action, including methods used, the location where the measure or action was taken, reasons for selecting the measure or action, start and completion dates of the work, names and addresses of all contractors involved, and if applicable, their State of accreditation, and accreditation numbers, and if ACBM is removed, the name and location of storage or disposal site of the ACM.
  - ii. The name and signature of any person collecting any air sample required to be collected at the completion of certain response actions specified by 40 C.F.R. § 763.90(i), the locations where samples were collected, date of collection, the name and address of the laboratory analyzing the samples, the date of analysis, the results of the analysis, the method of analysis, the name and signature of the person performing the analysis, and a statement that the laboratory meets the applicable requirements of 40 C.F.R. § 763.90(i)(2)(ii).

- 3) For each person required to be trained under 40 C.F.R. § 763.92(a) (1) and (2), the local education agency shall provide the person's name and job title, the date that training was completed by that person, the location of the training, and the number of hours completed in such training.
- 4) For each time that periodic surveillance under 40 C.F.R. § 763.92(b) is performed, the local education agency shall record the name of each person performing the surveillance, the date of the surveillance, and any changes in the conditions of the materials.
- 5) For each time that cleaning under 40 C.F.R. § 763.91(c) is performed, the local education agency shall record the name of each person performing the cleaning, the date of such cleaning, the locations cleaned, and the methods used to perform such cleaning,
- 6) For each time that operations and maintenance activities under 40 C.F.R. § 763.91(d) are performed, the local education agency shall record the name of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and if ACBM is removed, the name and location of storage or disposal site of the ACM.
- 7) For each time that major asbestos activity under 40 C.F.R. § 763.91(e) is performed, the local education agency shall provide the name and signature, State of accreditation, and if applicable, the accreditation number of each person performing the activity, the start and completion dates of the activity, the locations where such activity occurred, a description of the activity including preventive measures used, and if ACBM is removed, the name and location of storage or disposal site of the ACM.
- 8) For each fiber release episode under 40 C.F.R. § 763.91(f), the local education agency shall provide the date and location of the episode, the method of repair, preventive measures or response action taken, the name of each person performing the work, and if ACBM is removed, the name and location of storage or disposal site of the ACM.