

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

07 JAN 11 11 11 AM '06  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: § DOCKET NO. TSCA-06-2006-6078  
§  
BENTON COUNTY SCHOOL OF § COMPLAINT  
THE ARTS CHARTER SCHOOL § AND  
ROGERS, ARKANSAS § NOTICE OF OPPORTUNITY  
§ FOR HEARING  
RESPONDENT §

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**SECTION I**  
**PRELIMINARY STATEMENT**

This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 207(a) of the Toxic Substances Control Act, as amended (TSCA or the Act), 15 U.S.C. § 2647(a), enacted as a section of Title II of TSCA, known as the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. § 2641 et seq. The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, U.S. Environmental Protection Agency (EPA) Region 6, who is the person to whom the authority has been delegated to issue such Complaints in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Complainant will show that Benton County School of the Arts Charter School, Rogers, Arkansas (Respondent) violated TSCA and the regulations promulgated pursuant to TSCA.

**SECTION II**  
**ALLEGATIONS**

1. Respondent is Benton County School of the Arts Charter School which is a school in Rogers, Arkansas that is operated for students in grades K - 8.

2. The term "local educational agency" (LEA) means any local educational agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 3381), Section 202(7) of TSCA, 15 U.S.C. § 2642(7), and 40 C.F.R. § 763.83.

3. Respondent is a "local educational agency" as defined in Section 202(7) of TSCA, 15 U.S.C. § 2642(7), and 40 C.F.R. § 763.83, and as such is subject to Section 203 of the Act and the regulations at 40 C.F.R. Part 763.

4. The term "school building" means 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, a gymnasium, any facility which is specially designed for athletic or recreational activities for an academic course in physical education, a facility used for the instruction of students or for the administration of educational or research programs, maintenance, storage, or utility facility, including hallways essential to the operation of any facility as defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13), and 40 C.F.R. § 763.83.

5. Respondent operates as a school which has one or more structures suitable for use as a classroom, library, school eating facility and/or gymnasium.

6. Respondent operates as a "school building" as defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13), and 40 C.F.R. § 763.83.

7. Respondent is subject to Section 203 of TSCA, 15 U.S.C. § 2643, and 40 C.F.R. Part 763.

8. On July 17, 2006, a representative of EPA inspected Respondent's school pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, to determine compliance with the Asbestos-Containing Materials in Schools Rule, 40 C.F.R. Part 763, Subpart E.

9. Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3), provides that any local educational agency which fails to develop a management plan pursuant to regulations under Section 2643(i) or 2644(d) of this title, is liable for a civil penalty of not more than \$5,000 for each day during which the violation continues. Failure to comply with the statute and/or regulations at a single school building is a violation.

**COUNT I - FAILURE TO DEVELOP A MANAGEMENT PLAN PURSUANT TO SECTIONS 203(i)(1) AND (i)(5) OF TSCA, (15 U.S.C. §§ 2643(i)(1) AND (i)(5)) AND 40 C.F.R. § 763.93(a)(3)**

10. Paragraphs 1-9 above are realleged and incorporated by reference.

11. Section 203(i)(1) of TSCA, 15 U.S.C. § 2643(i)(1), requires a local educational agency to develop an asbestos management plan for the school buildings under its authority, and to begin implementation of such plan in a timely fashion.

12. Section 203(i)(5) of TSCA, 15 U.S.C. § 2643(i)(5), requires a local educational agency to make the management plan available in the administrative offices of the local educational agency for inspection by the public, teachers, school personnel, and parents.

13. 40 C.F.R. § 763.93(a)(3) requires a local educational agency to develop an asbestos management plan for a building that it begins to use as a school building that is leased or acquired after October 12, 1988, prior to using the building as a school building.

14. 40 C.F.R. § 763.93(g)(3) requires a local education agency to maintain in its administrative office a complete, updated copy of the management plan for the school.

15. During the inspection of July 17, 2006, the EPA representative discovered that Respondent did not develop an asbestos management plan for its school.

16. Respondent did not develop or have available a complete, updated copy of the asbestos management plan in its administrative office on July 17, 2006, as required by Sections 203(i)(1) and (i)(5) of TSCA, 15 U.S.C. § 2643(i)(1) and (i)(5), and 40 C.F.R. § 763.93(a)(3).

17. Therefore, Respondent has violated Section 203(i) of TSCA, 15 U.S.C. § 2643(i), by failing to develop an asbestos management plan and failing to have the asbestos management plan available in its administrative office.

### **SECTION III** **PROPOSED CIVIL PENALTY**

Section 207(a) of TSCA, 15 U.S.C. § 2647(a), and 40 C.F.R. § 763.97(a)(2) authorize a civil penalty of up to \$5,000 per day for each violation of TSCA. Under the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, penalties up to \$6,500 per day for each violation of Section 207 of TSCA may be assessed for violations that occur after March 15, 2004 (69 Fed. Reg. 7121 dated February 13, 2004). Based on the foregoing allegations and pursuant to the authority of Section 207(a) of TSCA, Complainant proposes to assess a civil penalty against Respondent in the amount of seven hundred and ninety-two dollars (\$792.00) for the violations alleged in this Complaint. Complainant's calculation of the proposed penalty is based upon: the facts stated in the Complaint; the nature, circumstances, extent and gravity of the above-cited violations in accordance with the "Interim Final Enforcement Response Policy" (ERP) for the Asbestos Hazard Emergency Response Act (dated 1/31/89) (copy enclosed); 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 (copy enclosed). In calculating the penalty, Complainant took into consideration the factors listed in Section 207(c)(1) of TSCA, 15 U.S.C. § 2647(c)(1): the significance of the violation; the culpability of the violator, including any previous violations of TSCA; the ability of the violator to pay the penalty; and the ability of the violator to continue providing educational services to the community.

The following is a summary of the violations cited, the extent of the violations (amount of substance involved in the violations), the circumstance level (potential for harm), and the proposed penalty based upon the AHERA ERP:

	Extent	Circumstance Level	Penalty
<u>Count I</u> - Failure to develop an asbestos management plan.	Significant	2	\$792.00
Proposed Penalty			\$792.00

The proposed penalty of \$792.00 was calculated in accordance with Section 207(c)(1) of TSCA, 15 U.S.C. In accordance with the statutory requirements of AHERA, the proposed penalty may be further reduced based on the costs expended by Respondent in correcting the violations identified in this Complaint, and for complying with the Asbestos-Containing Materials in Schools Rule. Respondent is required to provide compliance documents to:

Elvia E. Evering  
 Air/Toxics & Inspection  
 Coordination Branch (6EN-A)  
 U.S. EPA - Region 6  
 1445 Ross Avenue, Suite 1200  
 Dallas, Texas 75202-2733

**SECTION IV**  
**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), the Respondent has the right to request a formal hearing within 30 days after the Complaint is served as described at 40 C.F.R. § 22.14(a)(6), if the Respondent wants to contest any material fact set forth in this Complaint or the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice.

You must file a written Answer within 30 days after receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice (40 C.F.R. § 22.15(b)) to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegations in this Complaint will constitute an admission of the undenied allegation. The Answer shall also state the circumstances and argument, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be sent to:

Regional Hearing Clerk (6RC-D)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

In addition, please send a copy of the Answer and all other documents that you file in this action to Ms. Evering at the above address.

As indicated in 40 C.F.R. § 22.17, if you fail to file a written Answer within thirty (30) days of service of this Complaint, you may be deemed to have admitted all allegations made in this Complaint and waived your right to a hearing under TSCA. A Default Order may thereafter be issued by the Presiding Officer, and the civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after a Final Default Order is issued. Upon issuance of the Final Default Order, the Respondent must immediately comply with the Order provisions in the Complaint.

Respondent is further informed that 40 C.F.R. Part 22 prohibits an ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is filed.

#### **SECTION V** **SETTLEMENT CONFERENCE**

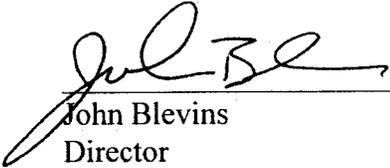
Whether or not you request a formal hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference contact Ms. Evering at the above address or call at (214) 665-7575.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which you must submit a written answer and if you so desire, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Please be advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 C.F.R. § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference, nor requested a hearing within the thirty (30) day time period, the above penalty may be assessed without further proceedings, in which case you will be notified that the penalty has become due and payable without further proceedings sixty (60) days after a Final Order is issued upon default.

Date: 11.9.06

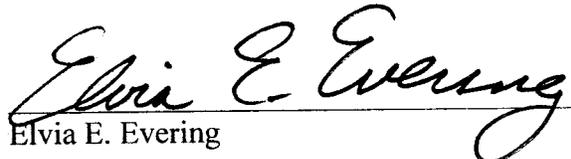
  
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John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**CERTIFICATE OF SERVICE**

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733, and a true and correct copy was mailed by certified mail, return receipt requested, to:

Gary Moore  
Administrator  
Benton County School of the Arts Charter School  
2005 South 12<sup>th</sup> Street  
Rogers, AR 72758

Date: JAN 11 2007

  
Elvia E. Evering