

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

IN RE:

Anne Arundel County Public Schools
2644 Riva Road
Annapolis, MD 21401

Docket No: TSCA-03-2013-0116

CONSENT AGREEMENT

Respondent

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 ("Complainant") and Anne Arundel County Public Schools ("Respondent"). This CA includes the assessment of a civil penalty against Respondent because it is a local education agency liable for violations which occurred at Severna Park High School and Broadneck High School (the "Facilities"), 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).

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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 alleged herein.

II. General Provisions

1. For the 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 the Environmental Protection Agency's ("EPA") 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 Facilities are 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 six hundred sixty-eight thousand four hundred nineteen dollars (\$668,419.00) since the Maryland Department of the Environment's ("MDE") inspections conducted during February and March of 2010 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, Anne Arundel County Public Schools, 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 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.
15. The Facilities, Severna Park High School, located at 60 Robinson Road in Severna Park, Maryland, and Broadneck High School, located at 1265 Green Holly Drive in Annapolis, Maryland, are each 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 Facilities are each 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. § 763.93(e)(8) provides that The management plan shall be developed by an accredited management planner and shall include....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 § 763.90.
19. On March 03, 2010, an authorized representative of the MDE conducted an inspection at the Severna Park High School pursuant to TSCA. During the inspection, the MDE inspector observed that Respondent had failed to update the school's management plan with records concerning abatement activities that took place during the 1990s and with information on remaining ACM amounts within the school.
20. Respondent's failure to conduct an initial inspection at the Facility identifying all locations of ACBM is a violation of 40 C.F.R. § 763.93(e)(8), and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

21. The allegations contained in Paragraph 1 through 20 are incorporated herein by reference.
22. Pursuant to 40 C.F.R. § 763.85(a)(2) provides, with exceptions not relevant to these proceedings, that any building leased or acquired by local education agencies on or after October 12, 1988 to be used as a school building shall be inspected to identify all locations of friable and non-friable asbestos-containing building material ("ACBM").

23. During the February 10, 2010 inspection conducted at Broadneck High School, the MDE inspector observed that Respondent had assumed a school building addition added in 1997 to be free of ACM building materials without confirmation from an accredited inspector, architect or project engineer. As a result, Respondent failed to have the school building addition inspected for ACM as required pursuant to 40 C.F.R. § 763.85(a)(2).
24. By failing to conduct an initial inspection, Respondent violated the requirements of 40 C.F.R. § 763.85(a)(2) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(1).

IV. Settlement Recitation

25. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that the Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for violations of TSCA. 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 one hundred dollars (\$7,100.00) is appropriate.
26. 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.

27. Respondent certifies that it has spent at least six hundred sixty-eight thousand four hundred nineteen dollars (\$668,419.00) since MDE's inspections conducted in February and March of 2010 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 one hundred dollars (\$7,100.00) of the civil penalty assessed against Respondent.
28. Respondent consents to the assessment of a seven thousand one hundred dollars (\$7,100.00) civil penalty with a cash component of zero (\$0.00) dollars.

V. Reservation of Rights

29. 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

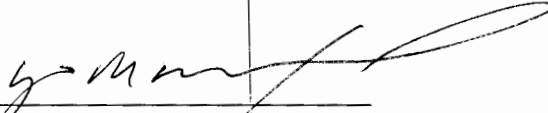
30. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

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.



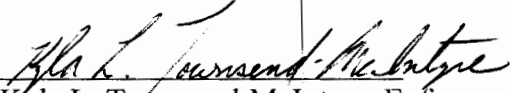
For Respondent:

3/22/13
Date


Dr. Kevin M. Maxwell, Superintendent
Anne Arundel County Public Schools

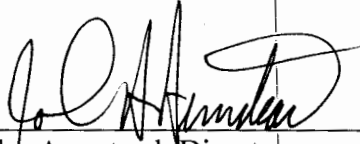
For Complainant:

04/05/2013
Date


Kyla L. Townsend-McIntyre, Enforcement Officer
Pesticides and Asbestos Programs Branch

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

4.22.13
Date


John Armstead, Director
Land and Chemicals Division



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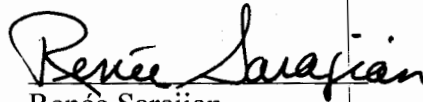
IN RE: :
: Anne Arundel County Public Schools : Docket No: TSCA-03-2013-0116
2644 Riva Road :
Annapolis, MD 21401 : FINAL ORDER
: Respondent :
:

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 one hundred dollars (\$7,100.00) but that the cash component of that civil penalty will be zero (\$0.00) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), seven thousand one hundred dollars (\$7,100.00) of the 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.

4/24/13
Date



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

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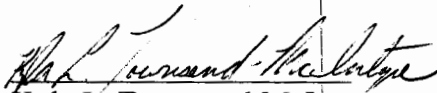
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CONSENT AGREEMENT

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):

Dr. Kevin M. Maxwell, Superintendent
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, MD 21401

04/24/2013
Date


Kyla L. Townsend-McIntyre

Enforcement Officer
U.S. Environmental Protection Agency, Region III