

II. GENERAL PROVISIONS

4. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
5. Except as provided in paragraph 4, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
6. Respondent agrees not to contest the EPA jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
7. 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.
8. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
9. 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.
10. 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 AHERA, Subchapter II of TSCA, 42 U.S.C. §§ 2641-2656, and regulations promulgated thereunder.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
12. Respondent shall bear its own costs and attorney fees.
13. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
14. By signing and executing this CA, Respondent certifies that it has already spent five thousand dollars (\$5,000.00) since the Maryland Department of the Environment's ("MDE") May 8, 2012 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.
15. 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 FACTS AND CONCLUSION OF LAW

16. 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.
17. Respondent, Rosedale Baptist 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.
18. The Facility, Rosedale Baptist School, is located at 9202 Philadelphia Road in Baltimore, Maryland, 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.
19. 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 – Failure to Conduct an Initial Inspection

20. The allegations contained in Paragraphs 1 through 19 are incorporated herein by reference.
21. 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").
22. On May 8, 2012, an authorized representative of the MDE conducted an inspection at the Facility pursuant to TSCA. During the inspection, the MDE inspector observed that the Respondent had failed to conduct an initial inspection of the Facility.
23. Respondent's failure to conduct an initial inspection of the Facility identifying all locations of ACBM is a violation of 40 C.F.R. §§ 763.85(a)(2) and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

Count II – Failure to Develop a Management Plan

24. The allegations contained in Paragraph 1 through 23 are incorporated herein by reference.
25. 40 C.F.R. § 763.93(a)(3) provides if a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit an asbestos management plan for the school to an Agency designated by the Governor prior to its use as a school.
26. During the May 8, 2012 inspection, the MDE inspector observed that the Respondent had failed to submit an asbestos management plan for the Facility to an Agency designated by the Governor prior to its use as a school, as required pursuant to 40 C.F.R. § 763.93(a)(3).
27. By failing to submit an asbestos management plan for the Facility to an Agency designated by the Governor prior to its use as a school, Respondent violated the requirements of 40 C.F.R. § 763.93(a)(3) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

Count III – Failure to Provide in Writing Parent, Teacher, and Employee Organizations Notification

28. The allegations contained in Paragraphs 1 through 27 are incorporated herein by reference.
29. 40 C.F.R. § 763.93(g)(4) provides upon submission of its management plan to the Governor and at least once each school year, the LEA shall notify in writing parent, teacher, and employee organizations of the availability of a management plan and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification. In the absence of any such organizations for parents, teachers, or employees, the LEA shall provide written notice to that relevant group of the availability of management plan and shall include in the management plan a description of the steps taken to notify such groups, and a dated copy of the notification.
30. During the May 8, 2012 inspection, the MDE inspector observed that the Respondent had failed to notify in writing parent, teacher, and employee organizations of the availability of a management plan, as required pursuant to 40 C.F.R. § 763.93(g)(4).
31. By failing to notify in writing parent, teacher, and employee organizations of the availability of a management plan, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

IV. SETTLEMENT RESITATION

32. 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 five thousand three hundred dollars (\$5,300.00) is appropriate.
33. 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.
34. Respondent certifies that it has spent five thousand dollars (\$5,000.00) since MDE's May 8, 2012 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 five thousand dollars (\$5,000.00) of the civil penalty assessed against Respondent.
35. Respondent consents to the assessment of a five thousand three hundred dollars penalty (\$5,300.00) with a cash component of three hundred (\$300.00) dollars.
36. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

314-418-1028

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH"), also known as Remittance Express (REX), to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid 202-874-7026
or REX, 1-866-234-5681

- f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

All payments shall also reference the above case caption and docket number, TSCA-03-2013-0152. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Ramon Albizu (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent [31 C.F.R. § 901.9(d)].

V. RESERVATION OF RIGHTS

38. 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.

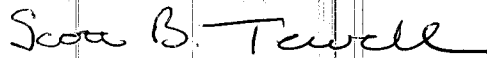
VI. EFFECTIVE DATE

39. 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:

7-24-13

Date

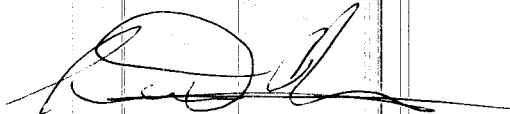


Dr. Scott Terrell, Senior Pastor
Rosedale Baptist Church

For Complainant:

8-29-13

Date

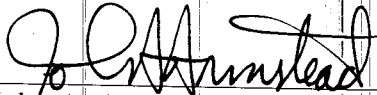


Ramon Albizu, Compliance Officer
Pesticides and Asbestos Programs Branch

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

9.9.13

Date



John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:

Rosedale Baptist Church
9202 Philadelphia Road
Baltimore, MD 21237

Respondent

:
:
:
:
:
:
:
:
:
:

Docket No: TSCA-03-2013-0152

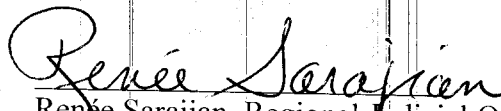
FINAL ORDER

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 five thousand three hundred dollars (\$5,300.00) but that the cash component of that civil penalty will be three hundred ninety (\$300.00) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), five thousand dollars (\$5,000.00) 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.

9/12/13
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 The Matter of:

Rosedale Baptist Church
9202 Philadelphia Road
Baltimore, MD 21237

Docket No: TSCA-03-2013-0152

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. Scott Tewell, Senior Pastor
Rosedale Baptist Church
9202 Philadelphia Road
Baltimore, MD 21237

Date: 9/16/13



Mr. Ramon Albizu
Pesticides/ Asbestos Compliance Officer
U.S. EPA - Region III