

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

In the Matter of:

Community United Methodist Church
8680 Fort Smallwood Road
Pasadena, MD 21122

Respondent

Community Christian Preschool and
Kindergarten, Inc.
8680 Fort Smallwood Road
Pasadena, MD 21122

Facility

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. TSCA-3-2010-0303

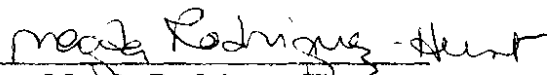
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 29, 2010, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2010-0303) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On July 30, 2010, a true and correct copy of the Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2010-0303) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

William Richardson, Chairman
Board of Trustees
Community United Methodist Church
8680 Fort Smallwood Road
Pasadena, MD 21122

Rosemarie B. Billings-Briggs, Director
Community Christian Preschool and Kindergarten, Inc.
8680 Fort Smallwood Road
Pasadena, MD 21122

Date: July 29, 2010


Magda Rodriguez-Hunt
Enforcement Officer
U.S. EPA - Region III

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Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

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8680 Fort Smallwood Road
Pasadena, MD 21122-2403

DOCKET NO: TSCA-03-2010-0303

CONSENT AGREEMENT

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CONSENT AGREEMENT

I. Preliminary Statement

This Consent Agreement ("CA"), issued under the authority set forth in Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, is entered into, through delegation, by the Director, Land and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Community United Methodist Church. This CA includes the assessment of a civil penalty against Community United Methodist Church ("Respondent"), because it is the local education agency liable for violations which occurred at Community Christian Preschool and Kindergarten, Inc., 8680 Fort Smallwood Road, Pasadena, MD 21122-2403, (the "Facility"), pursuant to TSCA Subchapter II, known as the Asbestos Hazard Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641 to

2656 (“TSCA AHERA”). This action is brought in accordance with TSCA AHERA 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).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) address violations by Respondent of TSCA AHERA and the federal regulations implementing TSCA 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 of TSCA AHERA alleged herein.

II. General Provisions

1. For purposes 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 EPA's 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 Facility is in compliance with the provisions of TSCA AHERA and regulations promulgated thereunder at 40 C.F.R. Part 763 Subpart E.
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 THOUSAND THREE HUNDRED TWENTY FIVE DOLLARS (\$ 6,325) since the Maryland Department of the Environment's inspection of July 23, 2007 for purposes of complying with TSCA AHERA and the regulations promulgated thereunder, in accordance with Section 207(a) of TSCA AHERA, 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 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.
14. Respondent, Community United Methodist Church, is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA AHERA, 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 TSCA AHERA.
15. The Facility, Community Christian Preschool and Kindergarten, Inc., located at 8680 Fort Smallwood Road, Pasadena, MD 21122-2403, is 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.
16. The Facility is 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.

COUNT I

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
18. 40 C.F.R. § 763.85(a)(2) requires that any building leased or acquired on or after October

12, 1988, that is to be used as a school building shall be inspected to identify all locations of friable and nonfriable asbestos containing building material (asbestos inspection) prior to use as a school building.

19. During a July 23, 2007 inspection of Community Christian Preschool and Kindergarten, a Maryland Department of the Environment (“MDE”) duly authorized inspector found that Fellowship Hall, which is part of the Facility, was used to house students. However, Community United Methodist Church had not performed an initial asbestos inspection of Fellowship Hall.
20. By failing to conduct an initial asbestos inspection of Fellowship Hall, Respondent violated the requirements of 40 C.F.R § 763.85(a) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1) at the Facility.

COUNT II

21. The allegations contained in Paragraphs 1 through 20 are incorporated herein by reference.
22. 40 C.F.R § 763.93(a) requires that if a local education agency begins to use a building as a school after October 12, 1988, the local education agency shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school.
23. During a July 23, 2007 TSCA AHERA inspection, the MDE found that Community United Methodist Church Preschool and Kindergarten, had been in operation since on or about 1994. However, the LEA had not prepared and submitted an asbestos management plan for Fellowship Hall, a part of the Facility.

24. By failing to prepare and submit an asbestos management plan for Fellowship Hall, Respondent violated the requirements of 40 C.F.R § 763.93(a) and Section 207(a)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3), at the Facility.

COUNT III

25. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.

26. 40 C.F.R. § 763.93(g)(4) requires that the local education agency at least once each school year notify in writing parent, teacher, and employee organizations or groups of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification.

27. During a July 23, 2007 TSCA AHERA inspection, the MDE found that Community United Methodist Church had not complied with the parent, teacher, and employee organizations or group notification requirements and related record keeping since the date the school began operating.

28. By failing to comply with the parent, teacher, and employee organizations or group annual notification and related record keeping requirements since the school began operating, Respondent violated the requirements of 40 C.F.R § 763.93(a) and Section 207(a)(3) of TSCA AHERA, 15 U.S.C. § 2647(a)(3).

IV. Settlement Recitation

29. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA AHERA, 15

U.S.C. § 2647(a), for Respondent's TSCA AHERA violations. 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 AHERA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of TWO THOUSAND EIGHT HUNDRED DOLLARS (\$ 2,800) is appropriate.

30. 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 AHERA, 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.

31. Respondent certifies that it has spent SIX THOUSAND THREE HUNDRED TWENTYFIVE DOLLARS (\$ 6,325) since MDE's July 23, 2007 inspection to comply with TSCA AHERA. Therefore, pursuant to Section 16(a)(2)(C) of TSCA and Section 207(a) of TSCA AHERA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of TWO THOUSAND EIGHT HUNDRED DOLLARS (\$ 2,800) of the civil penalty assessed against the Respondent.

32. Respondent consents to the assessment of a TWO THOUSAND EIGHT HUNDRED DOLLAR (\$ 2,800) civil penalty with a cash component of ZERO DOLLARS (\$ 0).

V. Reservation of Rights

33. 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 TSCA AHERA, 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

34. 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:

6/30/10
Date

William Richardson
William Richardson, Chairman
Board of Trustees
Community United Methodist Church

For Complainant:

7/8/10
Date

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Enforcement Officer

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

7/22/10
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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DOCKET NO: TSCA-03-2010-0303

FINAL ORDER

Respondent

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Facility

APPROVED
DATE: 03/10/10
BY: [Signature]

FINAL ORDER

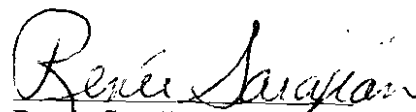
The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 207(c) of TSCA AHERA, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of TWO THOUSAND EIGHT HUNDRED DOLLARS (\$ 2,800), but that the cash component of that civil penalty will be ZERO DOLLARS (\$ 0).



In accordance with Section 207(a) of TSCA AHERA, 15 U.S.C. § 2647(a), the TWO THOUSAND EIGHT HUNDRED DOLLAR (\$ 2,800) 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.

7/27/10
Date



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