



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 of TSCA alleged herein.

## **II. General Provisions**

1. For 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 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 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 two thousand seven hundred forty four dollars (\$2,744) since EPA's March 1, 2007 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.
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, Pencader Business & Finance Charter High School, 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, including the Facility, 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, including the Facility, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of AHERA.

15. The Facility, Pencader Business & Finance Charter High School, located at 170 Lukens Drive in Newcastle Delaware 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.

16. 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

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.

18. Pursuant to 40 C.F.R. § 763.85(a)(1) except as provided in paragraph (a)(2) of this section, before October 12, 1988, LEAs shall inspect each school building that they lease, own, or otherwise use as a school building to identify all locations of friable and nonfriable ACBM.

19. On March 1, 2007, EPA's duly authorized inspector conducted an inspection at the Facility.
20. The inspector observed that the Pencader Business & Finance Charter High School was used by the LEA as a school prior to October 12, 1988 but had not been inspected to identify all locations of friable and nonfriable asbestos-containing building material ("ACBM").
21. Respondent's failure to conduct an inspection as required by 40 C.F.R. § 763.85(a)(1), constitutes a violation of Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. Pursuant to 40 C.F.R. § 763.93(a)(1), on or before October 12, 1988, each local education agency shall develop an asbestos management plan for each school, including all buildings that they lease, own, or otherwise use as school buildings, and submit the plan to an Agency designated by the Governor of the State in which the LEA is located.
24. On March 1, 2007 the inspector observed that the Facility did not have a management plan developed.
25. Respondent's failure to submit a management plan for the Facility to the Agency designated by the Governor on or before October 12, 1988, as required by 40 C.F.R. § 763.93(a)(1), constitutes a violation of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

### COUNT III

26. Pursuant to 40 C.F.R. § 763.93(g)(4), upon submission of its management plan to the Governor and at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations 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. In the absence of any such organizations for parents, teachers, or employees, the local education agency shall provide written notice to that relevant group of the availability of management plans and shall include in the management plan a description of the steps taken to notify such groups, and a dated copy of the notification.
27. At the time of the March 1, 2007 inspection, Respondent failed to annually notify in writing parent, teacher, and employee organizations of the availability of management plans. During the March 1, 2007 inspection EPA found that the Respondent did not have a dated copy of previous notifications with the management plan.
28. Respondent's failure to annually notify in writing parent, teacher, and employee organizations of the availability of management plans, as required by 40 C.F.R. § 763.93(g)(4) constitutes a violation of Section 207(a) of TSCA, 15 U.S.C. § 2647(a).

### **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, 15 U.S.C. § 2647(a), for Respondent's TSCA 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, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of two thousand four hundred twenty one dollars and thirty cents (\$2,421.30), 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, 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 two thousand seven hundred forty four dollars (\$2,744) since EPA's March 1, 2007 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 two thousand four hundred twenty one dollars and thirty cents (\$2,421.30), of the civil penalty assessed against the Respondent.
32. Respondent consents to the assessment of two thousand four hundred twenty one dollars and thirty cents (\$2,421.30), civil penalty with a cash component of zero dollars (\$ 0)

dollars.

#### **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 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.

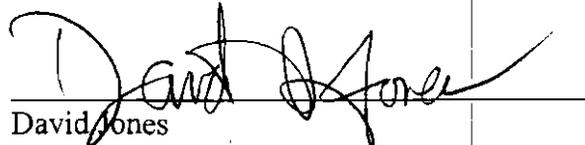
#### **VI. Effective Date**

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:**

6/5/06  
Date

  
David Jones  
Chief Executive

**For Complainant:**

6-20-08  
Date

  
Stephen Forostiak  
Compliance Officer

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

7/3/08  
Date

  
Abraham Ferdas, Director  
Waste and Chemicals Management Division



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

IN RE:

Pencader Business & Finance Charter High School :  
170 Lukens Drive :  
New Castle, DE 19720 :

Docket No: TSCA 03-2008-0331

**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 two thousand four hundred twenty one dollars and thirty cents (\$2,421.30), but that the cash component of that civil penalty will be zero dollars (\$0).

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the penalty of two thousand four hundred twenty one dollars and thirty cents (\$2,421.30), assessed against Respondent is hereby remitted.

The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

7/9/08  
Date

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

