



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

James Sandman, General Counsel
District of Columbia Public Schools
825 N. Capitol Street NE
Washington, DC 20002

JUN 30 2008

Re: District of Columbia Public Schools
AHERA SCAFO, EPA Docket No. TSCA-03-2008-0145

Dear Mr. Sandman:

Enclosed is the final Super Consent Agreement and Final Order (SCAFO) in the above-referenced matter. The SCAFO has been executed by EPA and filed with the Regional Hearing Clerk. This concludes this case; no further action is necessary on the part of the District of Columbia Public Schools.

Thank you again for your cooperation in resolving this matter. If you should have any questions regarding the SCAFO, please do not hesitate to contact me at (215) 814-2607.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel E. Boehmcke".

Daniel E. Boehmcke,
Senior Assistant Regional Counsel

Enclosure



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U.S. ENVIRONMENTAL PROTECTION AGENCY

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

IN RE: :
District of Columbia Public Schools : EPA Docket No. TSCA-03-2008-0145
825 North Capitol Street, NE :
Washington, DC 20002 : Proceeding under Sections 16 and 207 of the
 : Toxic Substances Control Act, 15 U.S.C.
Respondent : §§ 2615 and 2647
 :
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CONSENT AGREEMENT

I. Preliminary Statement

A. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, United States Environmental Protection Agency (“EPA”), Region III (“Complainant”) and the District of Columbia Public Schools (“Respondent”), pursuant to Sections 16 and 207 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615 and 2647, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), set forth at 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

B. The violations cited herein pertain to Respondent’s alleged failure to comply with the TSCA, Subchapter II (the Asbestos Hazard Emergency Response Act or “AHERA”), 15 U.S.C. §§ 2641 to 2646, and certain of its implementing regulations set forth at 40 C.F.R. Part 763, Subpart E (Asbestos Containing Materials In Schools) (the “AHERA Regulations”).

C. In accordance with Sections 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, the claims identified Section III (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. General Provisions

A. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the accompanying Final Order (hereinafter collectively referred to as “this CAFO”).

B. Respondent neither admits nor denies the specific factual allegations and

conclusions of law set forth in this CAFO, except as provided in Paragraph II.A., above.

C. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order or the enforcement of this CAFO.

D. For the purpose of this proceeding only, Respondent hereby expressly waives its rights to a hearing pursuant to Section 207 of the TSCA, 15 U.S.C. § 2647(a), concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. Respondent also waives any right to appeal the accompanying Final Order.

E. Respondent consents to the issuance of this CAFO and agrees to comply with the terms of this CAFO.

F. By signing this Consent Agreement, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, all one hundred sixty (160) schools owned by the Respondent are in compliance with the requirements of AHERA and the implementing regulations found at 40 C.F.R. Part 763, Subpart E.

G. Each party to this action agrees to pay its own costs and attorney fees.

H. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

I. This CAFO shall apply to and be binding upon Respondent, its officers, directors, successors and assignees.

III. Findings of Fact and Conclusions of Law

A. Complainant has determined that Respondent has violated certain requirements of the AHERA and the federal regulations set forth at 40 C.F.R. Part 763, Subpart E. In accordance with the Consolidated Rules of Practice, Complainant alleges the following findings of fact and conclusions of law:

1. On March 13-15, 2006, duly authorized representatives of the EPA conducted inspections at the following public schools in the District of Columbia pursuant to TSCA:

Randle Highlands Elementary School
Kimball Elementary School
Plummer Elementary School
Bunker Hill Elementary School
Shaed Elementary School
Whittier Elementary School

Stevens Elementary School
Slowe Elementary School
Payne Elementary School
Takoma Educational Center
Watkins Elementary School
Choice Academy Middle School/Junior High School at Taft
Hart Middle School
Ballou Senior High School
Choice Academy Senior High School at Douglass
Spingarn Senior High School
Wilson Senior High School
Paul Robeson Center
Ellington School of the Arts
Health and Human Services and Law and Legal Services Academy

2. Respondent, the District of Columbia Public Schools, is a “Local Educational Agency”(LEA) as that term is defined at Section 202(7) of TSCA, 15 U.S.C. § 2642(7), because the Respondent is the owner of all of the private, nonprofit elementary and secondary school buildings listed in paragraphs III.A.1., above.
3. Each of the twenty (20) schools and/or buildings listed in paragraphs III.A.1., above, 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, because each such school is either a secondary school, as defined at 20 U.S.C. § 7801(38), or an elementary school, as defined at 20 U.S.C. § 7801(18), or both.
4. Each of the schools and/or buildings inspected by EPA and listed above 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, because they are structures suitable for use as classrooms, and are currently used as classrooms.
5. Section 207 of TSCA, 15 U.S.C. § 2647, assesses penalties against any LEA which, among other things, fails to conduct an inspection pursuant to regulations under sections 203(b) or 204(b) of TSCA, 15 U.S.C. §§ 2643(b), 2644(b), or fails to develop a management plan pursuant to regulations under sections 203(i) or 204(d) of TSCA.
6. Section 203(b)of TSCA , 15 U.S.C. § 2643(b), requires the Administrator to promulgate regulations for the inspection of school buildings, which EPA has done at 40 C.F.R. Part 763. Section 204(b), 15 U.S.C. § 2644(b), requires that the LEA conduct an inspection for asbestos within 540 days after October 22, 1986.
7. Sections 203(i) and 204(d) of TSCA, 15 U.S.C. §§ 2643(i) and 2644(d), require that the Administrator of EPA promulgate regulations requiring LEA’s to develop

management plans and also specifies required elements of the management plans. EPA promulgated such regulations at 40 C.F.R. Part 763.

8. 40 C.F.R. § 763.90(a) provides that the LEA shall select and implement in a timely manner the appropriate response actions in this section consistent with the assessment conducted in Sec. 763.88. The response actions selected shall be sufficient to protect human health and the environment. The local education agency may then select, from the response actions which protect human health and the environment, that action which is the least burdensome method. Nothing in this section shall be construed to prohibit removal of ACBM from a school building at any time, should removal be the preferred response action of the local education agency.
9. During the March 13-15, 2006 inspection, EPA found that Respondent failed to implement a timely response action for damaged ACBM located in Room 101 at Hart Middle School which had been identified in the assessment report for the July, 2002, three-year reinspection conducted pursuant to 40 C.F.R. § 763.85 at Hart Middle School as necessitating response action.
10. Respondent's failure to implement a timely response action for damaged ACBM located in Room 101 at Hart Middle School is a violation of 40 C.F.R. § 763.90(a) and Section 207 of TSCA, 15 U.S.C. § 2647.
11. 40 C.F.R. § 763.94(c) requires that for each person required to be trained under Sec. 763.92(a) (1) and (2), the local education agency shall provide the person's name and job title, the date that training was completed by that person, the location of the training, and the number of hours completed in such training.
12. 40 C.F.R. § 763.94(d) requires that for each time that periodic surveillance under 40 C.F.R. § 763.92(b) is performed, the local education agency shall record the name of each person performing the surveillance, the date of the surveillance, and any changes in the conditions of the [asbestos-containing building] materials.
13. 40 C.F.R. § 763.94(a) requires that records required under Section 763.94 shall be maintained in a centralized location in the administrative office of both the school and the local education agency as part of the management plan. For each homogeneous area where all ACBM has been removed, the local education agency shall ensure that such records are retained for 3 years after the next reinspection required under Section 763.85(b)(1), or for an equivalent period.
14. During the March 13-15, 2006 inspection, EPA found that Respondent failed to keep the necessary records of periodic surveillance and worker training.

15. Respondent's failure to to keep the necessary records of periodic surveillance and worker training is a violation of 40 C.F.R. § 763.94(a), (c) and (d), and Section 207 of TSCA, 15 U.S.C. § 2647.
16. Section 40 C.F.R. § 763.93(g)(4) requires that, 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.
17. During the inspection conducted on March 13-15, 2006, EPA found that Respondent had not included in the management plans for the inspected schools a description of the steps taken to notify parent, teacher, and employee organizations or groups, and a dated copy of the notification, for each of the twenty schools inspected.
18. Respondent's failure to comply with the parent, teacher, and employee organization or group notification requirements and related recordkeeping requirements is a violation of 40 C.F.R. § 763.93(g)(4), and Section 207 of TSCA, 15 U.S.C. § 2647.
19. Section 40 C.F.R. § 763.93(a)(2) 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.
20. During the inspection conducted on March 13-15, 2006, EPA found that Respondent had not developed and submitted an asbestos management plan to the Agency designated by the Governor for Randle Highlands Elementary School prior to its use as a school as required by 40 C.F.R.763.93(a)(2).
21. Respondent's failure to comply with the asbestos management plan requirements for Randle Highlands Elementary School is a violation of 40 C.F.R. § 763.93(a)(2), and Section 207 of TSCA, 15 U.S.C. § 2647.
22. Section 40 C.F.R. § 763.92(b)(1) requires that at least once every 6 months after a management plan is in effect, each local education agency shall conduct periodic surveillance in each building that it leases, owns, or otherwise uses as a school building that contains ACBM or is assumed to contain ACBM.

23. During the inspection conducted on March 13-15, 2006, EPA found that Respondent had not been conducting periodic surveillance every six (6) months after the management plan went into effect at the following schools: Takoma Educational Center, Slowe Elementary School, Payne Elementary School, Hart Middle School, and Choice Academy Senior High School at Douglass.
24. Respondent's failure to comply with periodic surveillance requirements at Takoma Educational Center, Slowe Elementary School, Payne Elementary School, Hart Middle School, and Choice Academy Senior High School at Douglass is a violation of 40 C.F.R. § 763.92(b)(1), and Section 207 of TSCA, 15 U.S.C. § 2647.
25. 40 C.F.R. § 763.95 requires that the local education agency shall attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas (such as boiler rooms) at each school building.
26. During the inspection conducted on March 13-15, 2006, EPA found that Respondent had not attached a warning label immediately adjacent to ACBM located in a routine maintenance area at Ballou Senior High School.
27. Respondent's failure to comply with warning label requirements at Ballou Senior High School is a violation of 40 C.F.R. § 763.95, and Section 207 of TSCA, 15 U.S.C. § 2647.

IV. Settlement Recitation, Settlement Conditions And Civil Penalty

A. Complainant and Respondent enter into this Consent Agreement, and the attached Final Order, in order to fully settle and resolve all allegations set forth in Section III, "Findings of Fact and Conclusions of Law," above, and all claims for civil penalties pursuant thereto.

B. In full settlement of the violations alleged in Section III, above, and in consideration of Sections 207(a) and (c) of TSCA, 15 U.S.C. §§ 2647(a) and (c), and other relevant factors, Complainant has determined that a civil penalty of seven hundred thirty eight dollars (\$738) is appropriate. This settlement penalty amount 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), which are: the significance of the violation, the culpability of the violator, the ability of the violator to pay the penalty, 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.

C. By signing and executing this Consent Agreement, Respondent certifies that it has

already spent at least seven hundred thirty eight dollars (\$738) since EPA's initial March 13-15, 2006 inspection for the purpose of complying with TSCA AHERA 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.

D. In settlement of the violations set forth in Section III, above, Respondent hereby consents to the assessment of a seven hundred thirty eight dollars (\$738) civil penalty. However, in accordance with Sections 15(a)(1)(C) and 207(a) of TSCA, 15 U.S.C. §§ 2615(a)(1)(C) and 2647(a), and in recognition of the certification and documentation described in Paragraph IV.C, above, the cash component of the civil penalty shall be zero dollars.

E. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and the attached Final Order.

V. Effect of Settlement

Payment of the penalty specified in Section IV, above, in the manner set forth in Section IV, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in Section IV, above, shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Section III, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.

VI. Reservation of Rights

This CAFO resolves only the civil claims for the specific violations alleged in Section III, above. Respondent understands that EPA retains the right to reinspect any and all of Respondent's schools and that the discovery of additional violations may lead to further enforcement action, including the possible imposition of civil penalties. 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.

VII. Effective Date

The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

VIII. Entire Agreement

This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

IX. Execution

The undersigned representative for 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 THE RESPONDENT
DISTRICT OF COLUMBIA PUBLIC SCHOOLS:**

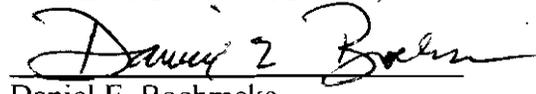


Michelle A. Rhee, Chancellor
District of Columbia Public Schools

6/17/08

Date

**FOR THE COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III**



Daniel E. Boehmcke
Senior Assistant Regional Counsel
U.S. EPA, Region III

6/20/08

Date

The Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of U.S. EPA Region III, or his designee, issue the accompanying Final Order.



Abraham Ferdas, Director
Waste and Chemicals Management Division

6/25/08

Date

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

IN RE: :
District of Columbia Public Schools : EPA Docket No. TSCA-03-2008-0145
825 North Capitol Street, NE :
Washington, DC 20002 : Proceeding under Sections 16 and 207 of the
 : Toxic Substances Control Act, 15 U.S.C.
Respondent : §§ 2615 and 2647
 :
 :

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 hundred thirty eight dollars (\$738), but that the cash component of the penalty shall be zero dollars (\$0). In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the seven hundred thirty eight dollars (\$738) penalty assessed against Respondent is hereby remitted. The effective date of this Final Order is the date on which this Final Order, signed by the Regional Judicial Officer of EPA Region III, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

6/27/08
Date

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

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 (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA, and that a true and correct copy was served via USPS Certified Mail, upon the following persons:

James Sandman, General Counsel
District of Columbia Public Schools
825 North Capitol Street, NE
Washington, DC 20002

6/30/08
Date


Daniel E. Boehmcke
Senior Assistant Regional Counsel
U.S. EPA , Region III
(215) 814-2607