

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

In The Matter of:	:	
	:	
Dallastown Area School District	:	Docket No: TSCA-03-2017-0189
700 New School Lane	:	
Dallastown, PA 17403	:	
	:	CONSENT AGREEMENT
	:	
Respondent	:	

1650 Arch Street  
Philadelphia, PA 19103-2029  
2017-03-13 10:01:11 AM

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 (“EPA” or “Complainant”) and the Dallastown Area School District (“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 Leaders Heights Elementary School (the “Facility”), 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).

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 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 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 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 seven thousand one hundred eighty three (\$7,183) since EPA's June 23, 2014 inspection for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with Section 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, Dallastown Area School District, 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 Facility, Leader Heights Elementary School located at 49 Indian Rock Dam Road in Dallastown, Pennsylvania 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. 40 C.F.R. § 763.93(d), provides, *inter alia*, that each LEA shall maintain and update its management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, reinspection, and response action activities. All provisions required to be included in the management plan under this section shall be retained as part of the management plan, as well as any information that has been revised to bring the plan up-to-date.
19. 40 C.F.R. § 763.93(g)(2) provides, *inter alia*, that each LEA shall maintain in its administrative office a complete, updated copy of a management plan for each school under its administrative control and 40 C.F.R. § 763.93(g)(3) provides, *inter alia*, that each school shall maintain in its administrative office a complete, updated copy of the management plan for that school.



20. The inspection conducted by EPA on June 23, 2014 found that Dallastown Area School District had a complete, updated management plan in the LEA's administration office.
21. The inspection conducted by EPA on June 23, 2014 found that Dallastown Area School District did not maintain a complete, updated management plan in Leader Heights Elementary School.
22. By failing to maintain and update the management plan, Respondent violated the requirements of 40 C.F.R. § 763.93(d).

COUNT II

23. The allegations contained in Paragraphs 1 through 22 are incorporated herein by reference.
24. 40 C.F.R. § 763.93(g)(4), provides, *inter alia*, that at least once each school year, the LEA notify in writing parent, teacher, and employee organizations of the availability of management plans and include in the management plans a description of the steps taken to notify such organizations, and a dated copy of the notification.
25. The inspection conducted by EPA on June 23, 2014 found that Dallastown Area School District failed to provide annual notification in writing to parents, teachers, and employee organizations of the availability of the management plan.
26. By failing to provide annual notification in writing to parents, teachers, and employee organizations about the availability of the LEA's management plan, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4).

COUNT III

27. The allegations contained in Paragraphs 1 through 26 are incorporated herein by reference.

28. 40 C.F.R. § 763.85(a), requires, *inter alia*, that each LEA 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.
29. In December 1988, Dallastown Area School District completed the initial inspection for the Loganville Elementary School management plan.
30. The inspection conducted by EPA on June 23, 2014 found that Dallastown Area School District had not inspected the modular building at Loganville Elementary School.
31. By failing to perform an inspection for the modular unit at Loganville Elementary School, Respondent violated the requirements of 40 C.F.R. § 763.85(a).

#### IV. Settlement Recitation

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 six thousand three hundred seventy five dollars (\$6,375) is appropriate.
33. The aforesaid 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 seven thousand one hundred eighty three (\$7,183) since EPA's June 23, 2014 inspection to comply with Subchapter II of TSCA. Therefore, pursuant to Section 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 six thousand three hundred seventy-five dollars (\$6,375) of the civil penalty assessed against Respondent.
35. Respondent consents to the assessment of six thousand three hundred seventy-five dollars (\$6,375) civil penalty with a cash component of zero dollars (\$0).

#### V. Reservation of Rights

36. 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

37. 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.

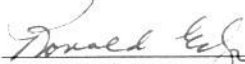


In the Matter of: Dallastown Area School District

EPA Docket No. TSCA-03-2017-0189

For Respondent:

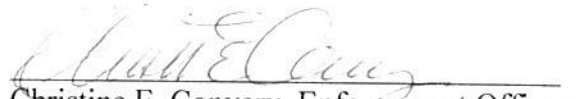
8-29-17  
Date

  
\_\_\_\_\_  
Ronald E. Dyer, Ed.D., Superintendent  
Dallastown Area School District




For Complainant:

9/19/17  
Date

  
Christine E. Convery, Enforcement Officer  
Pesticides and Asbestos Programs Branch

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

9-20-17  
Date

  
Martha Shimkin, Acting 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:**

**Dallastown Area School District  
700 New School Lane  
Dallastown, PA 17403**

**Respondent**

**EPA Docket No.: TSCA-03-2017-0189**

**FINAL ORDER**

**Proceeding under Sections 16 and 207 of  
the Toxic Substances Control Act,  
15 U.S.C. § 2615 and 2647(a)**

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Dallastown Area School District have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with 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 Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's January 1989 *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)* and the statutory factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c).

**NOW, THEREFORE, 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, **IT IS HEREBY ORDERED** that Respondent is assessed a civil penalty of six thousand three hundred seventy five dollars (\$6,375.00) 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), six thousand three hundred seventy five dollars (\$6,375.00) of the civil penalty assessed against the Respondent is hereby remitted.

The effective date of the Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 20, 2017  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
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 RE:

Dallastown School District  
700 New School Lane  
Dallastown, PA 17403

**Respondent**

Docket No. TSCA-03-2017-0189

Consent Agreement and  
Final Order


**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 Certified U.S. Mail upon the following person:

Dr. Ronald E. Dyer, Ed.D.  
Superintendent  
Dallastown Area School District  
700 New School Lane  
Dallastown, PA 17403

Date:

9/22/17


  
Ms. Christine Convery  
Pesticides/ Asbestos Enforcement Officer  
U.S. EPA - Region III



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

Subject: Toxic Substances Control Act  
Dallastown Area School District  
Docket No. TSCA-03-2017-0189  
Consent Agreement and Final Order

From: Mary Coe, Regional Counsel  
Office of Regional Counsel (3RC00)

  
Martha Shimkin, Acting Director  
Land and Chemicals Division (3LC00)

9/19/17

To: Joseph J. Lisa, Regional Judicial Officer  
Office of Regional Counsel (3RC00)

 9/20/2017

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and .18(b)(2), in settlement of alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 201 *et seq.*, by the Dallastown Area School District. A civil penalty of six thousand three hundred seventy five dollars (\$6,375.00) with a cash component of zero dollars (\$0.00) has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (AHERA)", dated January 31, 1989, as supplemented by the June 5, 2006 "Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule" and EPA's December 6, 2013 "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)."

TSCA Section 207(a) provides that any civil penalty under AHERA from a local education agency ("LEA") be reduced by the LEA's costs spent complying with AHERA requirements. Following EPA's June 2014 inspection, the LEA in this case documented costs to comply with AHERA and, therefore, the cash component of the assessed civil penalty is zero dollars (\$0.00). This is consistent with the "Assessing Administrative Civil Penalties Against an LEA" section of the 1989 Interim Final Enforcement Response Policy for AHERA.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

Attachments

cc: Dr. Ronald E. Dyer, Ed.D.  
Superintendent  
Dallastown Area School District  
700 New School Lane  
Dallastown, PA 17403  
[Ronald.dyer@dallastown.net](mailto:Ronald.dyer@dallastown.net)  
717-244-4021 x4261