

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

IN RE: :
: :
SACA Development Corporation : Docket No: TSCA 03-2010-0003
453 South Line Street :
Lancaster, PA 17602 :
: Consent Agreement
: :
Respondent :

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 SACA Development Corporation (“Respondent”). This CA includes the assessment of a civil penalty against the Respondent, because it is a local education agency liable for violations which occurred at the La Academia Charter 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 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 the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph I, 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 Respondent 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 three thousand six hundred and ninety dollars (\$3,690) since March 13, 2007 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 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, SACA Development Corporation, located at 545 Pershing Avenue in Lancaster, Pennsylvania is a "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 is responsible for ensuring that the Facility is in compliance with the requirements of TSCA AHERA.

15. The Facility, the La Academia Charter School, 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

16. The allegations contained in Paragraphs 1 through 15 are incorporated herein by reference.
17. Pursuant to 40 C.F.R. § 763.85(a)(2), any building leased or acquired on or after October 12, 1988, that is to be used as a school building shall be inspected as described under paragraphs (a) (3) and (4) of this section prior to use as a school building.
18. On March 13, 2007, a representative of the EPA conducted an inspection at the Facility.
19. The inspector discovered that the La Academia Charter School was used by the LEA as a school after October 12, 1988 but had not been inspected since August 1998.
20. Respondent’s failure to conduct an inspection as required by 40 C.F.R. § 763.85(a)(2), constitutes a violation of Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

21. The allegations contained in Paragraphs 1 through 20 are incorporated herein by reference.
22. 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.

23. At the time of the TSCA/AHERA inspection conducted on March 13, 2007, the EPA inspector discovered that the La Academia Charter School had been failing to annually notify in writing parent, teacher, and employee organizations of the availability of management plans since August 1998.
24. By failing to annually notify in writing parent, teacher, and employee organizations of the availability of management plans, Respondent violated the requirements of 40 C.F.R. § 763.93(g)(4) also constituting a violation of Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT III

25. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.
26. Pursuant to 40 C.F.R. § 763.93(a)(3), if a local education agency begins to use a building as a school after October 12, 1988, the [LEA] shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school.
27. On March 13, 2007 the inspector discovered that the Facility did not any have management plan developed for the Facility since August 1998.

28. Respondent's failure to submit a management plan for the La Academia Charter School to the Agency designated by the Governor after October 12, 1988, as required by 40 C.F.R. § 763.93(a)(3), constitutes a violation of Section 207(a)(3) of TSCA, 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, 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 five thousand five hundred and twenty five dollars (\$5,525) 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 three thousand six hundred and ninety dollars (\$3,690) since EPA's March 13, 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 three thousand six hundred and ninety dollars (\$3,690) of the civil penalty assessed against the Respondent.
32. Respondent consents to the assessment of a five thousand five hundred and twenty five dollars (\$ 5,525) civil penalty with a cash component of one thousand eight hundred and thirty five dollars (\$ 1,835).
33. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by cashier's or certified check, electronic wire transfer, Automated Clearinghouse, or online. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000. (Fedex and other non-U.S. Postal Service express mail deliveries shall be sent to U.S. Bank, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101.) All payments made by check shall reference the above case caption and docket number, TSCA 03-2010-003. Questions regarding payments made by check should be directed to Natalie Pearson at 314-418-4087. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency”). All Automated Clearinghouse or REX payments shall be directed to PNC Bank, 808 17th Street NW, Washington DC 20074, ABA No. 051036706, Transaction Code 22 – checking, Environmental Protection Agency, Account No. 310006, CTX Format. Questions regarding payments made through the Automated Clearinghouse should be directed to Jesse White at 301-887-6548. The online payment option can be accessed at WWW.PAY.GOV and by entering “sfo 1.1” in the search field.

At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, Automated Clearinghouse, or online payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Stephen Forostiak (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

V. Reservation of Rights

34. 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.

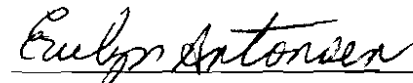
VI. Effective Date

35. 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.

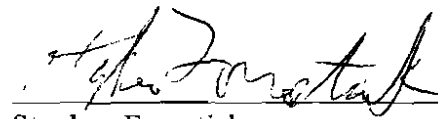
For Respondent:

10-22-09
Date



Ms Evelyn Antonsen
Chief Academic Officer

For Complainant:

10-02-09
Date


Stephen Forostiak
Compliance Officer

11/6/2009
Date

 for AF
Abraham Fordas, Director
Land and Chemicals Division

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

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

| | | |
|------------------------------|---|------------------------------|
| IN RE: | : | |
| | : | |
| SACA Development Corporation | : | Docket No: TSCA 03-2010-0003 |
| 453 South Line Street | : | |
| Lancaster, PA 17602 | : | 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, 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, 15 U.S.C. § 2647(c), Respondent is assessed a civil penalty of five thousand five hundred and twenty five dollars (\$5,525), but that the cash component of that civil penalty will be one thousand eight hundred and thirty five dollars (\$ 1,835).

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), three thousand six hundred and ninety dollars (\$3,690) 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.

1/7/10
Date



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

