



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

IN RE:

Kennedy Krieger Institute, Inc.
707 N. Broadway
Baltimore, MD 21205

DOCKET NO: TSCA-03-2011-0098

CONSENT AGREEMENT

Respondent

Kennedy Krieger School
3825 Greenspring Ave.
Baltimore, MD 21211

Facility

2011 MAR 30 PM 1:36
EPA REGION III PHILA. PA

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 Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Kennedy Krieger Institute, Inc. This CA includes the assessment of a civil penalty against Kennedy Krieger Institute, Inc. ("Respondent"), because it is a local education agency liable for violations which occurred at Kennedy Krieger School, 3825 Greenspring Ave., Baltimore, MD 21211 (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 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 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 SIXTEEN THOUSAND NINE HUNDRED FIFTY FIVE DOLLARS (\$ 16,955) since the Maryland Department of the Environment's ("MDE's") June 24, 2008 inspection 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, Kennedy Krieger Institute, Inc., 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, Kennedy Krieger School, located at 3825 Greenspring Ave., Baltimore, MD 21211, 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(b)(1) requires at least every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and

nonfriable know or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.

19. Based on an MDE inspection conducted on June 24, 2008, EPA found that The Facility had an asbestos management plan in effect since on or about September 1995, however, Respondent had not been conducting 3 year reinspections of the school building since the school began operating on or about September 2000.
20. By failing to conduct 3 year reinspections, Respondent violated the requirements of 40 C.F.R § 763.85(b)(1) and Section 207(a)(1) of TSCA AHERA, 15 U.S.C. § 2647(a)(1).

COUNT II

21. The allegations contained in Paragraphs 1 through 20 are incorporated herein by reference.
22. 40 C.F.R § 763.93(g)(4) requires upon submission of its management plan...and at least once each school year, the local education agency shall notify in writing parent, teacher, and employee organizations of the availability of the 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.
23. Based on an MDE inspection conducted on June 24, 2008, EPA found that Respondent had not been providing written notification to parent, teacher, and employee organizations or groups, and/or including in the management plan...dated copies of such notification.
24. By failing to provide annual notification and maintain a dated copy of such notification, Respondent violated the requirements of 40 C.F.R § 763.93(g)(4) and Section 207(a)(1)

of TSCA AHERA, 15 U.S.C. § 2647(a)(1).

Count III

25. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.
26. 40 C.F.R. § 763.84(c) requires that an LEA shall ensure that workers and building occupants, or their legal guardians are informed at least once each school year about inspections, response actions...that are planned or in progress.
27. 40 C.F.R. § 763.93(e)(10) additionally requires that each school management plan include a description of steps taken to inform workers and building occupants, or their legal guardians, about inspections, reinspections, response actions,...that are planned or in progress.
28. Based on an MDE inspection conducted on June 24, 2008, EPA found that Respondent had undergone at least one asbestos maintenance project, however, there were no records available to demonstrate that Respondent had informed workers and building occupants that the activity was planned or in progress.
29. By failing to comply with the worker and building occupant notification requirements, Respondent violated 40 C.F.R. § 763.84(c) and the related recordkeeping requirements of 40 C.F.R. § 763.93(e)(10)

IV. Settlement Recitation

30. 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 SIXTEEN THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$ 16,575) is appropriate.

31. 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.
32. Respondent certifies that it has spent SIXTEEN THOUSAND NINE HUNDRED FIFTY FIVE DOLLARS (\$ 16,955) since MDE's June 24, 2008 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 SIXTEEN THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$ 16,575) of the civil penalty assessed against the Respondent.
33. Respondent consents to the assessment of a SIXTEEN THOUSAND FIVE HUNDRED

SEVENTY FIVE DOLLAR (\$ 16,575) civil penalty with a cash component of ZERO DOLLARS (\$ 0).

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 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

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:

3/9/11
Date

Gary W. Goldstein
Dr. Gary W. Goldstein, President
Kennedy Krieger Institute, Inc.

For Complainant:

3/21/11
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.

3/28/11
Date

Wayne S. Meyer
for Abraham Ferdas, Director
Land and Chemicals Division



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

IN RE:

Kennedy Krieger Institute, Inc.
707 N. Broadway
Baltimore, MD 21205

DOCKET NO: TSCA-03-2011-0098

Respondent

FINAL ORDER

Kennedy Krieger School
3825 Greenspring Ave.
Baltimore, MD 21205

Facility

2011 JUN 20 PM 11:36
PHILADELPHIA, PA

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 SIXTEEN THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$ 16,575), 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 SIXTEEN THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLAR (\$ 16,575) 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.

3/29/11
Date

Renée Sarajian

Renée Sarajian
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 the Matter of:

Kennedy Krieger Institute, Inc.
707 N. Broadway
Baltimore, MD 21205

Respondent

Kennedy Krieger School
3825 Greenspring Ave.
Baltimore, MD 21211

Facilities

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. TSCA-3-2011-0098

CERTIFICATE OF SERVICE

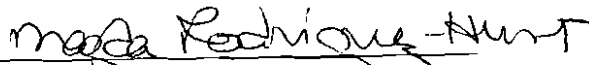
I, the undersigned, hereby certify that, on March 30, 2011, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2011-0098) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On March 31, 2011, a true and correct copy of the Consent Agreement/Final Order (Docket No. TSCA-03-2011-0098) and enclosures was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

Dr. Gary W. Goldstein, President
Kennedy Krieger Institute, Inc.
707 N. Broadway
Baltimore, MD 21205

Mr. John M. Gattus, Jr.
Kennedy Krieger Institute, Inc.
707 N. Broadway
Baltimore, MD 21205

MAR 31 2011

Date: _____


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

RECEIVED
U.S. EPA - REGION III
PHILADELPHIA, PA
2011 MAR 30 PM 14:35