

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2008 JUN 19 11:09:14
TSCA-03-2008-0112

IN RE:

The President and Directors of Gonzaga College Inc.,
19 Eye Street, NW
Washington, D.C. 20001

Docket No: TSCA-03-2008-0112

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, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and The President and Directors of Gonzaga College Inc., located in Washington, D.C. This CA includes the assessment of a civil penalty against The President and Directors of Gonzaga College Inc., ("Respondent"), because it is a local education agency liable for violations which occurred at the Gonzaga College High School, located at 19 and Eye Street, NW, in Washington, D.C. (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 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 ten thousand five hundred dollars (\$10,500) since EPA's October 31, 2006 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, The President and Directors of Gonzaga College Inc., 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 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 AHERA.
15. The Facility, Gonzaga College High School, located at 19 and Eye Street, NW, in Washington, D.C., 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 consists of five separate "school buildings" 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. § 763.85(b)(1) requires that at least once every 3 years after a management plan is in effect, each local education agency shall conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or

otherwise use as a school building.

19. On October 31, 2006, Mr. Harry Boyer, an authorized inspector of EPA, conducted an inspection at the Gonzaga College High School, pursuant to TSCA. During the inspection, the EPA inspector interviewed Mr. Mark Emory, the school's Headmaster, and discovered that the LEA had failed to conduct 3 year reinspections at two of the Facility's five school buildings: the Carmody Athletic Center, and the Dooley Hall Theatre Seat Area, as required by the regulations.
20. By failing to conduct 3 year reinspections, the Respondent violated the requirements of 40 C.F.R. § 763.85(b)(1) at the Carmody Athletic Center, and at the Dooley Hall Theatre Seat Area.

IV. Settlement Recitation

21. 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 seven thousand seven hundred dollars (\$7,700) is appropriate.
22. 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(e) 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.

23. Respondent certifies that it has spent ten thousand five hundred dollars (\$10,500) since EPA's October 31, 2006 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 the seven thousand seven hundred dollar (\$7,700) civil penalty assessed against Respondent.
24. Respondent consents to the assessment of a seven thousand seven hundred dollar (\$7,700) civil penalty with a cash component of zero (\$0) dollars.

V. Reservation of Rights

25. 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

26. 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:

5/13/08
Date

Allen P. Novotny
REV. Mr. Allen P. Novotny, Chief Executive
The President and Directors of Gonzaga
College Inc.

For Complainant:

5/19/08
Date

Carolyn Bernota
Carolyn Bernota, Enforcement Officer

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

6/6/2008
Date

Harry J. Dow for AF
Abraham Ferdas, Director
Waste and Chemicals Management Division

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

The President and Directors of Gonzaga College Inc:
19 Eye Street, NW
Washington, DC 20001

Docket No: TSCA-03-2008-0112

Respondent

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Final Order

FINAL ORDER

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

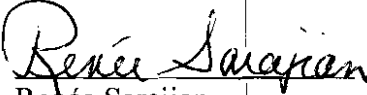
NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent is assessed a civil penalty of seven thousand seven hundred dollars (\$7,700), but that the cash component of that civil penalty is zero (\$0) dollars.

In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), the seven thousand seven hundred dollar (\$7,700) 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


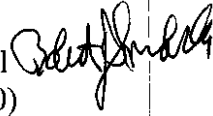
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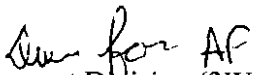
6/9/08
Date


Renée Sarajian
Regional Judicial Officer

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

Subject: Toxic Substances Control Act
The President and Directors of Gonzaga College High School Inc., Docket No.
TSCA-03-2008-0112
Consent Agreement and Final Order

From:  William C. Early, Regional Counsel 
Office of Regional Counsel (3RC00)

Abraham Ferdas, Director 
Waste & Chemicals Management Division (3WC30)

To: Renée Sarajian, Regional Judicial Officer
Office of Regional Counsel (3RC00)

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 The President and Directors of Gonzaga College Inc. A civil penalty of seven thousand seven hundred dollars (\$7,700) with a cash component of zero (\$0) has been calculated in accordance with the statutory factors of TSCA Section 207(c) and EPA's "Interim Final Enforcement Response Policy for AHERA", dated January 31, 1989, as supplemented by the "Gravity Based Penalty Matrices for Violations, which occur after January 30, 1997, for AHERA Interim Final ERP" effective January 30, 1997, and EPA's September 21, 2004 "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective Date: October 1, 2004)". 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. The LEA in this case documented that it has spent ten thousand five hundred dollars (\$10,500) in costs following EPA's October 21, 2006 inspection to comply with AHERA and, therefore, the cash component of the seven thousand seven hundred dollars (\$7,700) assessed civil penalty is zero dollars (\$0). 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).

cc: Mr. Allen P. Novotny, Chief Executive