

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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 In the Matter of :
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New Jersey Department of Corrections :
 :
 Respondent. :
 :
 Proceeding under the Toxic Substances :
 Control Act, 15 USC §§ 2601-2697 et seq, :
 as amended ("TSCA"). :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
 TSCA-02-2018-9103

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that the New Jersey Department of Corrections (hereinafter "Respondent") violated Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

COMPLAINANT'S FINDINGS OF FACT

1. Respondent is the New Jersey Department of Corrections.
2. Respondent owns, operates, and/or controls the facility in and around 1376 Stuyvesant Avenue in Trenton, New Jersey (hereinafter "Respondent's facility").
3. On or about March 19, 2018, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. As a result of the inspection, EPA determined that Respondent had failed to identify PCB waste submitted to Lorco Petroleum Services on January 17, 2017 for off-site disposal on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
5. On or about May 23, 2018, Complainant sent to Respondent a Notice of Opportunity Related to Enforcement Action Under TSCA, which alleged that Respondent had violated the PCB regulations at 40 C.F.R. Part 761.
6. On July 11, 2018, the parties met for an informal settlement conference.

COMPLAINANT'S CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.
2. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.
3. Failure to identify PCB waste submitted for off-site disposal on EPA Manifest form 8700-22 is a violation of 40 C.F.R. § 761.207(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Complainant's Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Complainant's Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Complainant's Conclusions of Law" section, above.
3. Respondent shall pay, by state check issued by the State of New Jersey Department of the Treasury, a civil penalty in the amount of **NINETEEN THOUSAND AND EIGHT HUNDRED DOLLARS (\$19,800)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Alternatively, payment may be made by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account: 68010727;
- 4) ABA number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency";
- 6) Name of Respondent; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. Full payment of the penalty described in paragraph 3, above, shall resolve Respondent’s liability for federal civil penalties for the violations and facts described in paragraph 4 in the “Complainant’s Findings of Fact” section, above, and paragraph 3 in the “Complainant’s Conclusions of Law” section, above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the “Complainant’s Findings of Fact” section, above, and the allegations contained in the “Complainant’s Conclusions of Law” section, above, or on any allegations arising thereunder in the instant matter with Docket No. TSCA-02-2018-9103 only. Respondent further waives its right otherwise to contest all such assertions and/or allegations in the instant matter with Docket No. TSCA-02-2018-9103 only.

7. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this

Consent Agreement and Final Order. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Any responses, documentation, and other communications submitted to EPA in connection with this Consent Agreement shall be sent to:

Vivian Chin, Environmental Engineer
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Edward Haas, Esq., M.S.W.
Legal Specialist
State of New Jersey Department of Corrections
Office of Legal and Regulatory Affairs
P.O. Box 863
Trenton, New Jersey 08625-0863


12. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BY: 
New Jersey Department of Corrections

NAME: C. Holmes
(PLEASE PRINT)

TITLE: Director

DATE: 8/24/18

COMPLAINANT: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

DATE: 9/11/18

In the Matter of New Jersey Department of Corrections
Docket Number TSCA-02-2018-9103

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of New Jersey Department of Corrections bearing Docket Number TSCA-02-2018-9103. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, pursuant to the authority of 40 C.F.R. § 22.18(b)(3), as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)).

DATE: Sept 12, 2018

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of New Jersey Department of Corrections
Docket Number TSCA-02-2018-9103

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of September 2018, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2018-9103, by certified mail, return receipt requested, to:

Mr. Edward Haas, Esq., M.S.W.
Legal Specialist
State of New Jersey Department of Corrections
Office of Legal and Regulatory Affairs
P.O. Box 863
Trenton, New Jersey 08625-0863

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.

