

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Marianne Milette 8/19/13
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TSCA-01-2013-0049

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Robert Fitzpatrick Jr., Esq.
Wilmer Hale
60 State St.
Boston, MA 02109

Total Dollar Amount of Receivable \$ 37,500.00 Due Date: 9/19/13

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1ST \$ _____ on _____
2ND \$ _____ on _____
3RD \$ _____ on _____
4TH \$ _____ on _____
5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

BY HAND

August 15, 2013

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Mail Code: ORA 18-1
Boston, MA 02109-3912

RECEIVED

AUG 15 2013

EPA ORC
Office of Regional Hearing Clerk

Re: *In the Matter of In the Matter of Kalikow Yaphank Development Corp. and Sam's PW, Inc.*, Docket No. TSCA-01-2013-0049

Dear Ms. Santiago:

Please file the enclosed Consent Agreement and Final Order ("CAFO") in the above-captioned matter. I have also enclosed a Certificate of Service, an extra copy of the CAFO, and a copy of the letter to the Regional Judicial Officer. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianne Milette".

Marianne Milette
PCB Enforcement Coordinator

Enclosures

cc: Lawrence Diamond, Esq.
Robert Fitzpatrick, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR

RECEIVED

AUG 15 2013

EPA ORC
Office of Regional Hearing Clerk

Docket No. TSCA-01-2013-0049

In the Matter of:)

Kalikow Yaphank Development Corp.)
& Sam's PW, Inc.)

Respondents.)

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), alleges that Kalikow Yaphank Development Corp. ("Kalikow") and Sam's PW, Inc. ("Sam's") (collectively referred to herein as "Respondents") violated sections of the Toxic Substances Control Act ("TSCA" or "the Act"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761. EPA and Respondents agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 CFR § 22.13(b), although Respondents neither admit nor deny liability or any findings, legal conclusions or allegations in this CAFO.

EPA and Respondents agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate and convenient means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. This is an administrative action for the assessment of monetary penalties and other relief pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614. Section 15(1)(C) states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

2. The PCB regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

3. The PCB regulations “establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).

4. Pursuant to 40 C.F.R. § 761.3, the PCB Regulations define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”

5. Pursuant to 40 C.F.R. § 761.3, the PCB Regulations define “PCB remediation waste” as “waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations \geq 50 ppm [parts per million] PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was \geq

500 ppm PCBs beginning on April 18, 1978, or ≥ 50 ppm PCB beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part.” PCB remediation waste can include environmental media containing PCBs, such as soil.

6. Pursuant to 40 C.F.R. § 761.50(b)(3), PCB remediation waste is regulated for cleanup and disposal under Part 761.61. Forty C.F.R. § 761.50(b)(3)(ii) specifies that any person responsible for PCB waste at as-found concentrations ≥ 50 ppm that was either placed in a land disposal facility or otherwise released into the environment on or after July 2, 1979 where the concentration of the spill or release was ≥ 50 ppm must dispose of it in accordance with § 761.61 (unless the Spill Cleanup Policy applies).

7. Pursuant to 40 C.F.R. § 761.1, no person may avoid any provision specifying a PCB concentration by diluting the PCBs unless otherwise specifically provided.

8. Respondents are “persons” as defined by 40 C.F.R. § 761.3 and as such are subject to TSCA and the regulations promulgated thereunder.

9. Kalikow is a corporation incorporated in the state of New York. Sam’s is a corporation incorporated in the State of Arkansas.

10. Kalikow owns and Sam’s leases the property which is the subject of this action, and which is located at 25 Pace Boulevard in Warwick, Rhode Island (“the Site”). Accordingly, Respondents are “persons responsible for PCB waste” at the Site under 40 C.F.R. §§ 761.50 and 61.

11. At some unknown time prior to August 20, 2012, PCB-contaminated material was disposed of at the Site by an unknown entity. Excavation at the Site began in 2012 for the reconstruction of an existing building located at the Site.

12. In August 2012, while excavating, two stockpiles were created containing soil and construction debris found at the Site. The debris included metal scrap, electrical equipment, concrete and wood, along with steel tanks. Analytical sampling was performed on soil from, in, and around the excavated area at the Site. Analytical results of stockpile samples (discrete and composite samples) taken on August 27 and August 31, 2012 indicated that PCBs were present at concentrations ranging from 0.28 ppm to 30.4 ppm, i.e., all less than (<) 50 ppm. However, analytical results of in situ samples, taken on August 31, 2012 from soils located in and around part of the excavation area, indicated PCBs were present at concentrations of up to 644 ppm.

13. Subsequently, in late September/October 2012, a third stockpile was created while shoring up the walls of the excavation area. Two composite samples of this stockpile indicated that PCBs were present at concentrations of 3.75 and 29 ppm.

14. EPA was initially informed of the facts set forth in paragraphs 9 through 13, above, in September 2012. Additional data was provided to EPA as it was obtained. With EPA's guidance and concurrence, in-situ soil and the stockpiles were sampled and necessary reports were prepared and submitted to EPA. The data generated has been accepted by EPA.

B. ALLEGATIONS

15. EPA alleges that, as a result of the activities referenced in paragraphs 12 and 13, above, Section 6(e) of TSCA and the PCB regulations were violated.

16. EPA alleges that, at some point between August 2012 and October 2012, PCB remediation waste was diluted in violation of 40 CFR § 761.1(b)(5).

17. EPA alleges that, at some point between August 2012 and October 2012, as a

result of the activities referenced in paragraphs 12 and 13, PCB remediation waste cleanup and disposal requirements found at 40 C.F.R. §§ 761.50(b)(3) and 761.61 were not complied with fully.

C. TERMS OF SETTLEMENT

18. The provisions of this CAFO shall apply to and be binding on EPA and on Respondents, their officers, directors, successors and assigns.

19. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondents waive any defenses they may have as to jurisdiction and venue, and, without admitting or denying the legal and factual allegations contained in this CAFO, consent to its terms.

20. Respondents hereby waive their right to contest any issue of law or fact set forth in the Consent Agreement and their right to appeal the Final Order accompanying this Consent Agreement.

REMOVAL OF STOCKPILES #1, #2 and #3

21. In April 2013, two of the stockpiles were sampled in accordance with a sampling plan accepted by EPA to confirm PCB concentrations in these stockpiles. A summary of the sampling and analytical results is included as Attachment 1 of this CAFO.

22. Based on the information in Attachment 1, and as referenced in 40 C.F.R. §§ 761.61(a) and (c) PCB Cleanup and Disposal Approval, dated June 5, 2013, Sam's may dispose of stockpiles #1, #2 and #3 as <50 ppm PCB remediation waste. (Kalikow will be identified as the generator of the material on any manifest or bill of lading required for off-site disposal of

stockpile material excavated or removed from the surface or subsurface of the Site.)

23. Within ten (10) days of signing this CAFO, Sam's shall submit a Stockpile Disposal Plan to EPA for review and approval. This Plan shall detail the soil handling activities that will be undertaken, air monitoring that will be employed during soil removal activities, and contractor equipment decontamination and waste disposal plans, and shall identify disposal facility(ies).

24. Within sixty (60) days of receiving EPA's approval of the Stockpile Disposal Plan, Sam's shall ship the three stockpiles for disposal as specified in paragraph 22 above and as detailed in the final approved Stockpile Disposal Plan.

25. Following removal of the three stockpiles, within five (5) days, Sam's shall conduct verification sampling of the three stockpile storage locations in accordance with 40 C.F.R. Part 761 Subpart O to verify, after laboratory analysis of the samples, that PCBs are no longer present at concentrations greater than 1 ppm. Following the completion of the verification sampling, Sam's shall submit the sampling results to EPA for review and comment, and shall perform additional verification sampling as required. Once EPA accepts the verification sampling results, and if the PCB concentrations are ≤ 1 ppm, no further PCB cleanup will be required for the three stockpile areas. Once EPA accepts the verification sampling results, and if PCB concentrations are > 1 ppm, Sam's shall submit a Stockpile Area Cleanup Plan within twenty-one (21) days of EPA's written (by e-mail) acceptance of the verification sampling work. Sam's shall make any changes to the Stockpile Area Cleanup Plan deemed necessary by EPA for compliance with § 761.61(a). Following EPA's review and final written concurrence of the

Stockpile Area Cleanup Plan, Sam's shall conduct and complete the cleanup in accordance with the provisions and schedule in said approved plan.

26. The provisions and schedules for the Stockpile Disposal Plan, verification sampling, and the Stockpile Area Cleanup Plan are enforceable under this CAFO, including any modifications made thereto pursuant to the force majeure and dispute resolution procedures of paragraphs 30 and 31.

27. Within thirty (30) days of the completion of the activities described in paragraph 25 above, Sam's shall submit a completion report, which details the cleanup activities, and a certification signed by a responsible corporate officer (based on the assertions of the responsible environmental consultant who prepared the completion report) that the cleanup work has been completed in accordance with the provisions of this CAFO and 40 C.F.R. Part 761. The completion report shall include, at a minimum, a short summary of the cleanup activities, copies of PCB waste shipment manifests for the stockpiles and any remaining contaminated soil, bills of lading, the total quantity of PCB-contaminated waste disposed of (in pounds) and any certificates of disposal received as of the date of certification, copies of the analytical sampling results, and QA/QC supporting documentation. Once EPA has reviewed the report and determined that the information submitted is complete, EPA shall issue a letter or e-mail indicating that EPA has no further comments.

28. Unless otherwise specified, all submissions and notifications to EPA required by this CAFO shall be to:

Kimberly Tisa, PCB Coordinator
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100

Mail Code OSRR07-2
Boston, MA 02109-3912
(617) 918-1527
tisa.kimberly@epa.gov

CLEANUP OF REMAINDER OF THE SITE

29. EPA and Respondents agree that this CAFO does not address the requirements for cleanup of any PCB contamination at the Site in areas other than the three stockpile locations (identified in Attachment 1 and referenced in paragraph 25 above). EPA expressly reserves all its rights to ensure in the future that Respondents undertake all appropriate cleanup measures to address PCB contamination at the Site, in areas other than the stockpiles, in accordance with 40 CFR § 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Rhode Island Department of Environmental Management's authority to address pollutants or contaminants of any kind at the Site.

DISPUTE RESOLUTION

30. The parties shall use the following procedures to resolve any disputes that arise under this CAFO.

Informal Dispute Resolution

a. The parties shall use their best efforts to resolve all disputes informally. If the dispute is resolved through informal dispute resolution, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this CAFO, and any requirements or schedules therein shall become enforceable requirements of this CAFO. If, however, disputes arise concerning this CAFO which the parties are otherwise unable to resolve, the parties shall

utilize the procedures set forth in Subparagraph c, "Formal Dispute Resolution," below. Unless otherwise agreed to by EPA, the informal dispute resolution period may not last longer than sixty (60) days from the day that the issue in dispute is raised unless the parties use alternative dispute resolution during informal dispute resolution, in which case the informal dispute resolution period may last no longer than ninety (90) days.

b. *Use of Alternative Dispute Resolution During Informal Dispute Resolution:* The following procedures apply to the use of alternative dispute resolution (ADR) during informal dispute resolution:

- i) *Initiation of ADR:* During informal dispute resolution, either Respondent(s) or EPA may propose the use of a mediator mutually agreeable to both parties, and may request, at the requesting party's sole discretion in the event the dispute involves a technical question, that such mediator be a qualified engineer or other trained and licensed technical consultant with expertise relevant and applicable to the nature of the dispute, to assist in resolving the dispute. In addition, upon the request of Respondent(s) or EPA, a meeting shall take place between the parties to the dispute with the assistance of a mediator for the purpose of resolving the dispute and/or determining whether to undertake further mediated discussions. Neither party may propose any mediators with whom they have any past, present, or planned future business relationships, other than primarily for mediation activities. Once both parties agree to the use of a mediator, the period for resolving any informal dispute using ADR (the "ADR Period") shall not exceed thirty (30) days. The initial

meeting with a mediator shall take place within fifteen (15) days of the party's request, unless the parties agree to extend that period. If the parties use ADR but cannot resolve the dispute, formal dispute resolution, as governed by the procedures set forth in Subparagraph c, "Formal Dispute Resolution," below, shall commence immediately upon the termination of the ADR period.

- ii) Decision to Continue ADR: After the initial mediated meeting, the decision to continue the mediation shall be in the sole discretion of each party.
- iii) Costs of ADR: The parties agree that they will share equitably the costs of mediation, subject to the availability of EPA funds for this purpose. EPA's ability to share the costs of mediation will be determined by EPA in its sole discretion and shall not be subject to dispute resolution or judicial review. If EPA determines that no mediation funding is available, Respondent(s) shall have the option to cover all of the mediation costs or to request the services of a trained mediator from EPA's in-house ADR program or any other dispute resolution professional whose services may be available to the parties at no cost.
- iv) Confidentiality: The parties agree that participants in mediated discussions pursuant to this Section, including the mediator, shall execute a mutually-acceptable confidentiality agreement, the form for which EPA shall provide to Respondent(s) if the parties enter into mediated discussions.
- v) Agreement: If the dispute is resolved through ADR, the resolution shall be reduced to writing, signed by both parties, and incorporated into the CAFO, and

any requirements or schedules therein shall become enforceable under the CAFO.

Formal Dispute Resolution

c. In the event that the parties cannot resolve a dispute by informal negotiations under either subparagraph a or b above ("Informal Dispute Resolution"), the position advanced by EPA shall be considered binding unless Respondent(s) invokes the formal dispute resolution procedures as outlined below:

- i) Initiation of formal dispute resolution: If Respondent(s) disagrees, in whole or in part with any written decision ("Initial Written Decision") by EPA pursuant to this CAFO, except those decisions that are not subject to review, Respondent(s) shall submit to EPA a formal notice of objection to EPA's Initial Written Decision. The notice of objection must contain the bases for Respondent's or Respondents' objection, including but not limited to any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Respondent(s). Respondent(s) must submit the notice of objection within, five (5) days after the termination of the informal ADR period.
- ii) Formal dispute resolution period: After EPA receives Respondent's or Respondents' notice of objection, the parties shall then have an additional ten (10) days from EPA's receipt of Respondent's or Respondents' objections to attempt to resolve the dispute. During this period, Respondent(s) may request a meeting with the Director of the Office of Environmental Stewardship, EPA Region 1 in order to

make an oral presentation of its position and may bring to that meeting, at Respondent's or Respondents' sole discretion, a qualified engineer or other trained and licensed technical consultant with expertise relevant and applicable to the nature of the dispute, to assist Respondent(s) in presenting the basis for its objections with regard to any technical dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this CAFO, and any requirements or schedules therein shall become enforceable requirements of this CAFO.

- iii) EPA Dispute Decision: If EPA and Respondent(s) are unable to reach agreement within the period specified in subparagraph c.ii. above, the Director of the Office of Environmental Stewardship shall notify Respondent(s), in writing, of his or her decision and the bases for that decision within seven (7) days (hereinafter referred to as the "Dispute Decision.") Such decision shall be final and incorporated into this CAFO. Any requirements or schedules therein shall become enforceable requirements of this CAFO. Such decision shall not be subject to judicial review, except in response to an action that EPA takes to enforce compliance with this CAFO, in which case, Respondent(s) reserves the right, which EPA acknowledges has not been waived hereunder, to argue that the Dispute Decision is contrary to law or arbitrary and capricious.
- iv) Use of ADR: The parties may, upon mutual consent, use ADR during the formal dispute resolution period.

d. The existence of a dispute as defined in this section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CAFO during the pendency of the dispute resolution process, unless the nature of the dispute involves (a) the technical feasibility of the compliance obligation or (b) a good faith contention that EPA's position is contrary to law or arbitrary and capricious as defined by federal law.

e. Within seven (7) days after either (a) reaching a dispute resolution agreement under through informal dispute resolution or (b) receiving EPA's Dispute Decision under subparagraph c.iii., Respondent(s) shall notify EPA that it has initiated compliance with the requirements of the agreement or decision. In the event that Respondent(s) fails or refuses to comply, EPA may take such enforcement actions as are authorized by law. Except as expressly waived in this CAFO, Respondent(s) reserves all rights, remedies and defenses it may have under law or in equity against such enforcement actions.

f. EPA may extend the time periods established in this paragraph upon notice to Respondent.

FORCE MAJEURE AND EXCUSABLE DELAY

31. Force majeure, for purposes of this CAFO, is defined as any event arising from causes not foreseen and beyond the control of Respondent(s) or any person or entity controlled by Respondent(s), including but not limited to Respondent's or Respondents' contractors, that delays or prevents the timely performance of any obligation under this CAFO. Force majeure does not include increased costs of the work to be undertaken under this CAFO, financial inability to

complete the work, work stoppages or other labor disputes. Force majeure does include weather events and other changes in the condition of the natural environment that could impact the work, the acts of unrelated third parties that interfere with Respondent's or Respondents' ability to perform, acts of God, war, riot, terrorism, or compliance with any law or governmental order or court order, rule, or directions.

32. If Respondent(s) wishes to claim a force majeure event, then within 5 days of learning of the delay or potential for delay, Respondent(s) must notify EPA of the delay or potential for delay and within 15 days provide EPA in writing all relevant information relating to the delay, including all actions taken or to be taken to prevent or minimize the delay and a proposed revised schedule. Respondent(s) shall include with any notice all available documentation supporting its claim. Failure to comply with the above requirements may preclude Respondent(s) from asserting any claim of force majeure for that event. Respondent(s) shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

33. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation.

34. If EPA disagrees with Respondent's or Respondents' assertion of a force majeure event or the time period adjustment attributable to the force majeure event, EPA will notify Respondent(s) in writing, and Respondent(s) may elect to invoke the dispute resolution provision. In any such proceeding, Respondent(s) shall have the burden of demonstrating by a

preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent(s) complied with the requirements of this Section. If Respondent(s) satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

PENALTY

35. Section 16(a) of TSCA, together with the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$37,500 per day for each violation. Pursuant to Section 16 of TSCA, and taking into account the facts recounted in this CAFO and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of thirty-seven thousand, five hundred dollars (\$37,500).

36. Sam's shall pay the penalty of thirty-seven thousand, five hundred dollars (\$37,500) within thirty (30) days of the date this CAFO is filed with the Regional Hearing Clerk.

37. Sam's shall pay the penalty by submitting a certified or cashier's check to the order of the "Treasurer, United States of America" and in the required amount to:

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

Sam's shall note the case name and docket number of this action on the check, and shall provide copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Catherine Smith
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3912

38. Stipulated Penalties:

- a. If Sam's fails to comply with paragraphs 23-28 of this CAFO, including any requirement of a plan approved pursuant to those paragraphs, Sam's shall pay a stipulated penalty of two hundred and fifty dollars (\$250.00) for each day that the violation occurs or continues.
- b. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
- c. Payment of stipulated penalties shall be made within fifteen (15) days of receipt of a written demand by EPA and in accordance with the payment procedures described in paragraph 37. A separate stipulated penalty shall apply and accrue for each provision of the CAFO violated.
- d. Dispute Resolution for Stipulated Penalties: If upon receipt of the written demand, Sam's believes that the stipulated penalty is inappropriate; Sam's may invoke the Dispute

Resolution procedures of paragraph 30. If EPA agrees with Sam's arguments, EPA may, at its sole discretion, reduce the amount of the written demand or withdraw it. Sam's shall pay any stipulated penalties subsequently assessed within ten (10) days of receiving EPA's decision.

e. Payment of stipulated penalties shall be in addition to any other relief available under federal law. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

39. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

40. Penalties under this CAFO, and any interest, nonpayment penalties and charges described in this CAFO, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

41. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated

stockpiled materials (i.e., Stockpiles 1 through 3) identified in paragraphs 12 and 13, above. EPA expressly reserves all its rights relating to all other areas of the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent(s) to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards at any area of the Site.

42. The parties shall bear their own costs and fees in this action.

43. The terms and conditions of this CAFO may not be modified or amended except by written agreement of both parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements to modify the compliance schedules contained in paragraphs 23-28.

44. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent, Kalikow Yaphank Development Corp.:

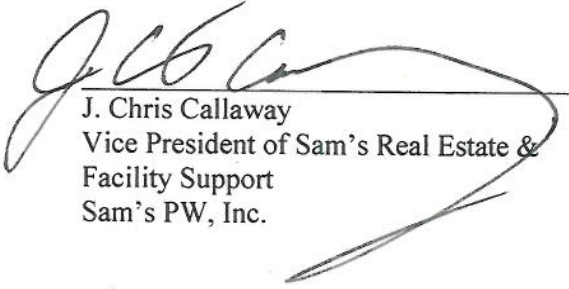


Edward Kalikow, President
Kalikow Yaphank Development Corp.

7/25/13

Date

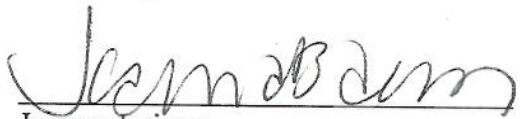
For Respondent, Sam's PW, Inc.



J. Chris Callaway
Vice President of Sam's Real Estate &
Facility Support
Sam's PW, Inc.

7/25/13
Date

For Complainant:



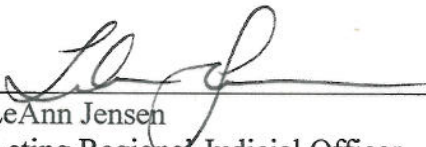
Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

8/9/13
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: August 14, 2013



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

In the Matter of Kalikow Yaphank Development Corp. & Sam's PW, Inc., TSCA 01-2013-0049

In the Matter of In the Matter of Kalikow Yaphank
Development Corp. and Sam's PW, Inc.
Docket No. TSCA-01-2013-0049

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order (CAFO) has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:


Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

One copy of CAFO
via certified mail, return
receipt requested

Robert F. Fitzpatrick Jr., Esq.
WilmerHale
60 State Street
Boston, MA 02109

Lawrence Diamond, Esq.
Duane Morris LLP
One Riverfront Plaza
1037 Raymond Boulevard, Suite 1800
Newark, NJ 07102-5429

Dated: August 15, 2013


Marianne Milette
PCB Enforcement Coordinator
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES05-4)
Boston, MA 02109-3912
Tel: (617) 918-1854
FAX: (617) 918-0854
Email: milette.marianne@epa.gov