

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Betts Environmental Services
Corporation

Respondent

Proceeding Under the Toxic
Substances Control Act, as
amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. TSCA-02-2017-9104

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated on or about August 3, 2017, pursuant to Section 16(a), 15 U.S.C. § 2615(a) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq. (hereinafter referred to as "TSCA" or the "Act"), and 40 C.F.R. § 22.13(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). At that time, the Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued an administrative civil Complaint to the Respondent, Betts Environmental Services Corporation. The Complaint assessed penalties for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" ("the PCB Regulations"), 40 C.F.R. Part 761. The parties subsequently entered into negotiations in an attempt to

settle the allegations contained in the Complaint. This Consent Agreement and Final Order (“CA/FO”) is the result of such negotiations, and fully and finally resolves the allegations contained in the Complaint. The Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Betts Environmental Services Corporation (aka Betts Environmental & Alternative Fuels and/or Betts Environmental & Fuel Services), a New Jersey corporation (hereinafter “Respondent” or “Betts”).
2. Respondent is a corporation formed under the laws of the State of New Jersey.
3. Respondent’s headquarters is located at 160 Hamburg Turnpike, Butler, New Jersey 07405.
4. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3, and is subject to TSCA and the regulations promulgated thereunder.
5. Respondent is an environmental contractor that has provided environmental investigation, remediation and environmental management services to Westbrook Friendly Service, Inc. (“WFS”), the owners of the Westbrook Friendly Gasoline and Auto Repair Service station (hereinafter “the Westbrook facility”) of West Milford, New Jersey.
6. The Westbrook facility is a .403-acre gasoline retail and automotive repair facility comprised of a single story building with associated asphalt paved areas, gasoline dispensers, and underground storage tanks (“UST”) systems for the storage of petroleum products.

7. Respondent has employed a New Jersey Licensed Site Remediation Professional and has supplied its service in connection with the investigation and remediation of environmental conditions at the Westbrook facility.

8. During a subsurface investigation at the Westbrook Facility in September 2015, Respondent discovered an abandoned 2,000-gallon capacity underground storage tank (“UST E5”) in poor condition and containing approximately 1,475 gallons of waste oil. This waste oil was pumped from UST E5 into a tanker truck and transported to a waste oil recycling facility in New Jersey.

9. Upon arriving at the waste oil recycling facility, the waste oil from UST E5 was tested while still in the tanker truck and revealed to contain PCBs at 78 parts per million (“ppm”). An additional 125 gallons of PCB-contaminated rinse water was generated during the cleaning and rinsing of the tanker truck, bringing the total accumulation to 1,600 gallons (or more than 11,000 pounds) of PCB waste (“the Combined PCB Waste”).

10. The waste oil recycling facility did not accept the Combined PCB Waste and delivered it to Respondent in totes and drums. Respondent then transported the Combined PCB waste to the Westbrook facility, where the Respondent then poured approximately 1195 gallons back into UST E5 and stored the remaining 405 gallons in nine 55-gallon drums.

11. At all times relevant to this administrative proceeding, the Respondent has conducted, directed, and overseen the Westbrook facility with respect to environmental management operations, including oversight of the Combined PCB Waste (in the 2,000 gallon UST and in the nine 55-gallon drums) and marking, storage, transport, and disposal of the Combined PCB Waste.

12. At all times relevant to this administrative proceeding, Respondent was an “operator” of the Westbrook facility within the meaning of 40 C.F.R. Part 761.65(b).

13. Respondent had physical control of the UST E5 and its Combined PCB Waste, which were stored at the Westbrook facility.

14. Respondent had physical control of the nine 55-gallon drums and their Combined PCB Waste, which were stored at the Westbrook facility.

15. Respondent through its acts caused the production of PCB waste, namely contaminated rinse water that is regulated for disposal under 40 C.F.R. Part 761 subpart D.

16. At all times relevant to this administrative proceeding, Respondent was a “generator” of “PCB waste” as those terms are defined at 40 C.F.R § 761.3.

17. At all times relevant to this administrative proceeding, Respondent was subject to the regulations and requirements pertaining to the marking, storage, transport, and disposal of 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.

18. As used herein, the terms “PCB(s),” “PCB Container,” “PCB Item,” “PCB waste(s),” “Generator of PCB waste,” “Disposal,” “Storage for Disposal,” “Commercial Storer of PCB waste,” “Transport vehicle,” “Transporter,” “Mark” and “Marked” shall have the definition and meaning set forth at 40 C.F.R. § 761.3.

19. Subpart K of 40 C.F.R. Part 761 sets forth the requirements for PCB waste disposal records and reports, including the requirements for storers and generators of PCB waste to have an EPA identification number to notify EPA of PCB waste activity, and to properly prepare a PCB waste manifest. See 40 C.F.R. Sections 761.202, 205, and 207.

20. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605(e).

21. Pursuant to 40 C.F.R. § 761.1(a), the PCB Regulations establish “prohibitions on, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of PCBs and PCB Items.

22. Pursuant to 40 C.F.R. § 761.1(b), the PCB Regulations apply to “all persons who manufacture, process, distribute in commerce, use or dispose of PCBs or PCB Items.

23. On or about April 20, 2016, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, duly-authorized EPA inspectors conducted an inspection (“the Inspection”) at the Westbrook Facility.

24. EPA’s inspection was conducted to determine Respondent’s compliance with the EPA regulations pertaining to PCBs, codified at 40 C.F.R. Part 761.

25. During the EPA Inspection, the inspectors informed Respondent about the PCB regulations at 40 C.F.R. Part 761, specifically the requirements regarding PCB waste manifests, storage, marking, remediation, decontamination and Respondent’s plans for disposal.

26. Respondent acknowledges the PCB requirements relating to manifesting, notification, transport, storage, marking and disposal pursuant to 40 C.F.R. Part 761.

27. Based on observations made at the April 2016 inspection and review of documents collected before, at, and subsequent to EPA’s inspection, EPA determined that the Respondent committed the following PCB violations, as alleged in EPA’s August 3, 2017 administrative Complaint:

(1) failure to prepare a manifest for the transport and disposal of the PCB waste contained in UST E5 from the Westbrook facility, which constitutes a failure to comply with 40 C.F.R. § 761.207(a) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(2) failure to mark with the PCB M_L Mark the transport vehicle used to convey the Combined PCB Waste from Betts’ facility to the Westbrook facility, which constitutes a failure

to comply with 40 C.F.R. § 761.40(b) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(3) failure to notify EPA of PCB waste handling activities, which constitutes a failure to comply with 40 C.F.R. §§ 761.205(a)(2) and (c)(2) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(4) drum storage of PCBs awaiting disposal in an inadequate storage area, which constitutes a violation of 40 C.F.R. §§ 761.65(b)(1)(i)-(v) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(5) failure to mark the drum storage area with the PCB M_L Mark, which constitutes a failure to comply with 40 C.F.R. § 761.40(a)(10) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(6) failure to mark the nine 55-gallon PCB Containers (Drums) with the PCB M_L Mark, which is a failure to comply with 40 C.F.R. § 761.40(a)(1) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C);

(7) storage of PCBs awaiting disposal in an inadequate storage area (UST E5), which constitutes a violation of 40 C.F.R. §§ 761.65(b)(1)(i)-(v) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C); and

(8) failure to mark the UST storage area with the PCB M_L Mark, which constitutes a failure to comply with 40 C.F.R. § 761.40(a)(10) and is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

28. In September 2016, Respondent arranged for off-site disposal of the Combined PCB Waste stored in the nine 55-gallon drums at the Westbrook facility at an approved PCB waste disposal facility in New Jersey.

29. In September 2016, Respondent arranged for off-site disposal of the Combined PCB Waste stored in UST E5 at an approved PCB waste disposal facility in Texas.

30. On September 27, 2017 and October 10, 2017, Respondent submitted financial information and documentation to EPA regarding Respondent's financial condition and demonstrating an inability to pay the penalty proposed in the Complaint.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed that:

1. Respondent shall hereinafter maintain compliance with the statutory provisions of TSCA, as amended, 15 U.S.C. § 2615 *et seq.*, and its implementing regulations.
2. Respondent certifies that, as of the date of execution of this CA/FO, it is in compliance with the statutory provisions of Section 16 of TSCA, 15 U.S.C. § 2615, and its implementing regulations.
3. Respondent certifies, under penalty of law, that the financial information and documentation submitted to EPA on September 27, 2017 and October 10, 2017 regarding Respondent's financial condition is accurate, complete and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false and misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's claim of inability to pay is false, or in any material respect, inaccurate.

4. Respondent shall pay, either by certified check or electronically by Fedwire, a civil penalty in the amount of **Fifty Thousand Dollars (\$50,000.00)** in accordance with the payment terms and schedule set forth in Paragraph 6 below.

a. If payment is made by check, then each such check shall be made payable to the “Treasurer of the United States of America” and shall be mailed by one of the following two methods:

STANDARD DELIVERY

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Each check shall be identified with a notation thereon listing the following: *In the Matter of Betts Environmental Services Corporation*, and shall bear the Docket No. TSCA-02-2017-9104.

b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

- i. Amount of payment
- ii. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 10045**

- iii. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- iv. Federal Reserve Bank of New York ABA routing number: **021030004**
- v. Field Tag 4200 of the Fedwire message should read: “**D 68010727
Environmental Protection Agency**”
- vi. Name of Respondent: **Betts Environmental Services Corporation**
- vii. Case Docket Number: **TSCA-02-2017-9104**

5. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*ie.*, the Treasury tax and loan account rate) on installment payments, which is one percent (1%) per annum for calendar year 2018.

6. The civil penalty of \$50,000, set forth in paragraph 4, above, shall be paid in four installments, with applicable interest at the rate of one percent (1%) per annum on the outstanding principal balance, as described immediately below (total interest payments to equal One Hundred Four Dollars and Seventeen Cents (\$104.17), equaling a total payment (principal plus interest) of \$50,104.17.

- a. 1st Payment: The first payment, in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), consisting of a principal payment of \$25,000.00 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which the Regional Administrator signs the Final Order.
- b. 2nd Payment: The second payment, in the amount of EIGHT THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS AND ZERO CENTS (\$8,375.00), consisting of a principal payment of \$8,333.33 and an interest payment of \$41.67 shall be paid on or before three months from the date on which the Regional Administrator signs the Final Order.
- c. 3rd Payment: The third payment, in the amount of EIGHT THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS AND ZERO CENTS (\$8,375.00), consisting of a principal payment of \$8,333.33 and an interest payment of \$41.67

shall be paid on or before six months from the date on which the Regional Administrator signs the Final Order.

- d. 4th Payment: The fourth payment, in the amount of EIGHT THOUSAND THREE HUNDRED FIFTY-FOUR DOLLARS AND SEVENTEEN CENTS (\$8,354.17), consisting of a principal payment of \$8,333.34 and an interest payment of \$20.83 shall be paid on or before nine months from the date on which the Regional Administrator signs the Final Order.

Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

7. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in Paragraph 6, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges, late penalty charges and attorney fees and collection costs, as described in Paragraphs 8, 9, and 10 below, in the event of any such failure or default and remit such payment in accordance with the payment instructions in paragraph 4, above.

8. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

9. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that

remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31
C.F.R. § 901.9(d).

10. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

11. Nothing in this document is intended nor shall be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

12. The civil penalties provided for herein are penalties within the meaning 26 U.S.C. § 162(f) and are not deductible expenditures for purposes of federal, state or local law.

13. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Vivian Chin
Environmental Engineer
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

and

Bruce Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty and any stipulated penalty) to Respondent at the following address:

Michael Betts, President
Betts Environmental Services Corporation
160 Hamburg Turnpike
Butler, New Jersey NJ 07405

14. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent. Full payment of the penalty described in paragraph 4 above shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

15. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding based on the Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies any determination in the Findings of Fact and Conclusions of Law contained herein.

16. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

17. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty and any stipulated penalties that become due in accordance with the terms of this Consent Agreement.

18. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

19. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

20. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.

21. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

22. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, 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 Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

23. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

24. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement and Final Order, and b) he or she is duly and fully authorized to

bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

25. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.


26. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

27. Each party hereto agrees to bear its own costs and fees in this matter.

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

In the Matter of Betts Environmental Service Corporation
Docket Number TSCA-02-2017-9104

RESPONDENT:

BY: 

(Signature)

NAME: Michael Betts

TITLE: President

COMPANY NAME: Betts Environmental Services Corporation

DATE: 3/14/2018

In the Matter of Betts Environmental Service Corporation
Docket Number TSCA-02-2017-9104

COMPLAINANT:



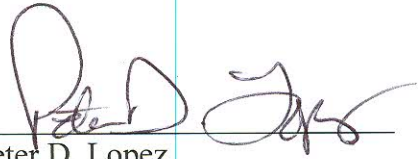
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: **MAR 26 2018**

**In the Matter of Betts Environmental Service Corporation,
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FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: 3/28/18

**In the Matter of Betts Environmental Service Corporation,
Docket Number TSCA-02-2017-9104**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

David R. Pierce, Esquire
Lindabury, McCormick, Estabrook & Cooper, P.C.
53 Cardinal Drive
Westfield, New Jersey 07091-2369

Michael Betts, President
Betts Environmental Services Corporation
160 Hamburg Turnpike
Butler, New Jersey 07405

Dated: Apr. 10, 2018
New York, New York

