



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 24 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL @ SSANTANGELO@KESTER.COM

Mr. David Santangelo
Global Operations Director
Kester LLC
800 West Thorndale Avenue
Itasca, Illinois 60143

Consent Agreement and Final Order –In the Matter of:
Kester LLC; Itasca, Illinois Docket No. TSCA-05-2019-0002

Dear Mr. Santangelo:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on October 24, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$74,165 is to be paid in the manner described in paragraphs 86-91. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kendall Moore".

Kendall Moore
Pesticides and Toxics Compliance Section

Enclosure

cc: Chris Grubb, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Kester LLC
Itasca, Illinois,

Respondent.



Docket No. TSCA-05-2019-0002

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Kester LLC, a Delaware corporation with its principal office at 940 W. Thorndale Avenue, Itasca, Illinois, 60143.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCBs) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605. 43 *Fed. Reg.* 7,150 (Feb. 17, 1978). The PCBs Manufacturing, Processing, Distribution in Commerce and Use Prohibitions (PCB rule) incorporated previous disposal and marking regulations. 44 *Fed. Reg.* 31,514 (May 31, 1979). The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

10. Under 40 C.F.R. § 761.3, "PCB waste" is defined as those PCBs and PCB Items that are subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.

11. Under 40 C.F.R. § 761.3, a "person" is defined, in pertinent part, as any natural or judicial person including any individual, corporation, partnership, or association.

12. Under 40 C.F.R. § 761.3, “disposal” is defined as intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

13. Under 40 C.F.R. § 761.3, “PCB Container” is defined as any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

14. Under 40 C.F.R. § 761.3, a “PCB Item” is defined as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

15. **Disposal Requirements – PCB Liquids.** Under 40 C.F.R. § 761.60(a), with certain exceptions not applicable here, PCB liquids with concentrations of 50 parts per million (ppm) or greater must be disposed of in an incinerator that complies with 40 C.F.R. § 761.70.

16. **Disposal Requirements – PCB Container.** Under 40 C.F.R. § 761.60(c)(1), unless decontaminated in compliance with 40 C.F.R. § 761.79, a PCB Container with PCB concentrations at 500 ppm or greater shall be disposed of: (i) in an incinerator which complies with 40 C.F.R. § 761.70; or, (ii) in a chemical waste landfill that complies with 40 C.F.R. § 761.75.

17. Under 15 U.S.C. § 2614 and 40 C.F.R. § 761.1(d), it is unlawful for any person to fail or refuse to comply with any requirement of 40 C.F.R. Part 761. Any violation of 40 C.F.R. Part 761 may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

18. The Administrator of EPA may assess a civil penalty of up to \$37,500 per day for each violation of TSCA that occurred after January 12, 2009, and up to \$38,892 per day for each violation of TSCA that occurred after November 2, 2015, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

19. At all times relevant to this Order, Kester, Inc., owned and operated a solder and soldering materials manufacturing facility at 940 W. Thorndale Avenue, Itasca, Illinois (the “Itasca Facility”).

20. On or about December 21, 2017, Kester, Inc. reorganized and became Kester LLC.

21. Kester LLC, as the corporate successor of Kester, Inc., is liable for Kester, Inc.’s violations of TSCA.

22. At all times relevant to this Order, Respondent was a “person” as defined at 40 C.F.R. § 761.3.

23. Prior to 2012, Respondent owned a facility in Nogales, Mexico (the “Nogales Facility”). The Nogales Facility closed in 2012.

24. Following the close of the Nogales Facility in 2012, Respondent moved equipment from the Nogales Facility to the Itasca Facility, including a heat transfer vessel that had been used to heat flux as part of the production process at the Nogales Facility.

25. In approximately May 2015, Respondent’s employees drained fluid from the heat transfer vessel into three 55-gallon drums and one 275-gallon tote that were already partially filled with hydraulic fluid.

26. On May 28, 2015, Respondent shipped the three 55-gallon drums and one 275-gallon tote to Tradebe Treatment & Recycling, LLC, East Chicago (“Tradebe”), Indiana under manifest #014657696.

27. Tradebe does not own or operate an incinerator that complies with 40 C.F.R. § 761.70.

28. Tradebe received the shipment on May 29, 2015.

29. Tradebe tested the fluid contained in the three 55-gallon drums and one 275-gallon tote for PCBs.

30. The fluid contained in the three 55-gallon drums and one 275-gallon tote had a PCB concentration of at least 5,000 ppm.

31. Tradebe issued a PCB rejection notification to Respondent on June 2, 2015. Upon notification from Tradebe, Kester worked with Tradebe to ship the PCB fluids for incineration at Veolia ES Technical Solutions, LLC, in Port Arthur, Texas.

32. During the process of draining the fluid from the heat transfer vessel, Respondent’s employees spilled approximately 10 gallons of the fluid onto the concrete floor of the Itasca Facility.

33. Respondent’s employees applied an absorbent material called “oil dri,” and also used absorbent pads and a vacuum to clean up the fluid. The vacuum and other materials were put into a 55-gallon drum, which was later labeled as containing “PCB Parts.”

34. Respondent’s employees also mopped the concrete floor. The employees dumped the dirty water generated from the mopping into a drain pan that drained to a wastewater evaporator system that Respondent used to treat wastewater it generated.

35. On March 22, 2017, EPA inspected the Itasca Facility.

36. In 2017, Respondent hired Covanta Environmental Solutions (“Covanta”) to test the contents of the 55-gallon drum labeled “PCB Parts,” as well as components of the wastewater evaporator system, for PCBs.

37. The vacuum used to clean-up the spilled fluid from the heat transfer vessel had a PCB concentration at 1,750 µg/wipe sample.

38. A wipe sample result with a PCB concentration ≥ 100 µg/wipe sample equates to a PCB concentration ≥ 500 ppm. *See* 40 C.F.R. § 761.1(b)(3).

39. The wastewater evaporator’s collection tank had a PCB concentration at 76.7 ppm.

40. A tote that drained to the wastewater evaporator had a PCB concentration at 13,900 ppm.

41. The approximately 10 gallons of fluid that spilled from the heat transfer vessel onto the concrete floor of the Itasca Facility had a PCB concentration at 50 ppm or greater.

42. On October 31, 2017, Respondent, in coordination with its PCB management and disposal consultant, shipped the 55-gallon drum labeled “PCB Parts,” including the vacuum used to clean-up the spilled fluid from the heat transfer vessel, to CES-Milwaukee, a municipal solid waste landfill, under manifest #017910773.

43. CES-Milwaukee is not an incinerator which complies with 40 C.F.R. § 761.70 or a chemical waste landfill that complies with 40 C.F.R. § 761.75.

44. The fluid spilled from the heat transfer vessel constitutes “PCB waste” as that term is defined at 40 C.F.R. § 761.3.

45. The fluid contained in the three 55-gallon drums and one 275-gallon tote after the employees drained fluid from the heat transfer vessel into those drums and tote constitutes “PCB waste” as that term is defined at 40 C.F.R. § 761.3.

46. The vacuum used to clean-up the spill constitutes "PCB waste" as that term is defined at 40 C.F.R. § 761.3.

Count I – Improper Disposal of PCB Liquids

47. Complainant incorporates paragraphs 1 through 46 of this Order as though set forth here in full.

48. The spill of approximately 10 gallons of fluid from the heat transfer vessel onto the Itasca Facility's concrete floor constitutes "disposal" as that term is defined at 40 C.F.R. § 761.3.

49. The approximately 10 gallons of spilled fluid from the heat transfer vessel constitutes PCB liquids with a PCB concentration at 50 ppm or greater.

50. Respondent failed to dispose of the spilled PCB liquids in an incinerator that complies with 40 C.F.R. § 761.70.

51. Respondent's failure to dispose of PCB liquids in accordance with the applicable disposal requirements constitutes a violation of 40 C.F.R. § 761.60(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count II – Improper Disposal of PCB Liquids

52. Complainant incorporates paragraphs 1 through 51 of this Order as though set forth here in full.

53. Respondent's acts of draining fluid from the heat transfer vessel into the three 55-gallon drums and one 275-gallon tote of "used oil" and shipping the three drums and one tote to Tradebe constitute "disposal" as that term is defined at 40 C.F.R. § 761.3.

54. The three 55-gallon drums and one 275-gallon tote contained PCB liquids with PCB concentrations at 50 ppm or greater.

55. Respondent's failure to dispose of PCB liquids in accordance with the applicable disposal requirements constitutes a violation of 40 C.F.R. § 761.60(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count III – Improper Disposal of PCB Container

56. Complainant incorporates paragraphs 1 through 55 of this Order as though set forth here in full.

57. The vacuum used to clean-up the spilled fluid from Respondent's heat transfer vessel constitutes a "PCB Container," as that term is defined at 40 C.F.R. § 761.3.

58. The vacuum used to clean-up the spilled fluid from Respondent's heat transfer vessel had a PCB concentration at 500 ppm or greater.

59. Respondent's act of shipping the PCB Container on October 31, 2017 to "CES – Milwaukee," a municipal solid waste landfill, under manifest #017910773 constitutes "disposal" as that term is defined in 40 C.F.R. § 761.3.

60. Respondent's failure to dispose of the PCB Container in accordance with the applicable disposal requirements constitutes a violation of 40 C.F.R. § 761.60(c) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count IV – Storage of PCB Item for Disposal for Greater Than One Year

61. Complainant incorporates paragraphs 1 through 60 of this Order as though set forth here in full.

62. 40 C.F.R. § 761.65(a)(1) provides, in pertinent part, "[a]ny PCB waste shall be disposed of as required by subpart D of this part within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins."

63. On or about May 28, 2015, when Respondent's employee(s) placed the vacuum in a 55-gallon drum, Respondent removed from service for disposal the vacuum used to clean-up the spilled fluid.

64. Respondent shipped the 55-gallon drum, including the vacuum, for disposal on October 31, 2017 under manifest #017910773.

65. By failing to dispose of PCB waste within one-year, Respondent violated 40 C.F.R. § 761.65(a)(1) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count V – Failure to Date PCB Item When Placed in Storage

66. Complainant incorporates paragraphs 1 through 65 of this Order as though set forth here in full.

67. Under 40 C.F.R. § 761.65(c)(8), PCB Items shall be dated on the item when they are removed from service for disposal.

68. The vacuum used to clean-up the spilled fluid from Respondent's heat transfer vessel constitutes a "PCB Item" as that term is defined at 40 C.F.R. § 761.3.

69. On or about May 28, 2015, Respondent removed from service for disposal the vacuum used to clean-up the spill, when it's employee(s) placed the vacuum in a 55-gallon drum following the spill cleanup.

70. Respondent did not date the vacuum when it was removed from service, and did not date the 55-gallon drum until August 16, 2016, more than one-year after Respondent removed the vacuum from service for disposal.

71. By failing to date a PCB Item when the item was removed from service for disposal, Respondent violated 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count VI – Failure to Mark Storage Area

72. Complainant incorporates paragraphs 1 through 71 of this Order as though set forth here in full.

73. Under 40 C.F.R. § 761.65(c)(3), any storage area subject to the requirements of 40 C.F.R. § 761.65(b) or 40 C.F.R. § 761.65(c)(1) shall be marked as required in 40 C.F.R. § 761.40(a)(10).

74. 40 C.F.R. § 761.65(b) prescribes requirements for the owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal.

75. 40 C.F.R. § 761.65(c)(1) provides less stringent PCB storage area requirements where certain (primarily non-leaking) types of PCB Items and PCB Containers are stored temporarily for up to thirty days from the date of their removal from service.

76. 40 C.F.R. § 761.40(a)(10) requires that a storage area used to store PCBs and PCB Items be marked with a large PCB mark, referred to as mark M_L, which is illustrated at 40 C.F.R. § 761.45(a).

77. During a Resource Conservation and Recovery Act compliance evaluation inspection on March 22, 2017, an EPA inspector found the 55-gallon drum labeled “PCB Parts” in the Itasca Facility’s hazardous waste storage area.

78. The hazardous waste storage area where the EPA inspector found Respondent’s 55-gallon drum labeled “PCB Parts” was a storage area subject to the requirements of 40 C.F.R. § 761.65(b).

79. Respondent failed to mark the storage area with mark M_L as required by 40 C.F.R. § 761.65(c)(3) and 40 C.F.R. § 761.40(a)(10).

80. By failing to mark the storage area in accordance with the applicable requirements, Respondent violated 40 C.F.R. § 761.65(c)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count VII – Failure to Mark PCB Item

81. Complainant incorporates paragraphs 1 through 80 of this Order as though set forth here in full.

82. Under 40 C.F.R. § 761.40(a)(1), a PCB Container must be marked with mark M_L.

83. Respondent's 55-gallon drum labeled "PCB Parts" constitutes a PCB Container as that term is defined at 40 C.F.R. § 761.3.

84. Respondent failed to mark the 55-gallon drum labeled "PCB Parts" with mark M_L.

85. By failing to mark its PCB Container in accordance with the applicable requirements, Respondent violated 40 C.F.R. § 761.40(a)(1) and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

86. Pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Complainant determined that an appropriate civil penalty to settle this action is \$18,541. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant also considered Respondent's good faith and cooperation in resolving this matter, including steps that Respondent has agreed to take to complete a supplemental environmental project costing \$74,165.00 (described at paragraphs 92 to 110, below) in determining an appropriate civil penalty amount.

87. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$18,541 civil penalty for the TSCA violations by certified or cashier's check payable to

"Treasurer, United States of America" and by delivering the check to:

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

88. Respondent must include the case name on the check and in the letter transmitting the check. Respondent must simultaneously send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Christopher B. Grubb (C-14J)
Assistant Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
grubb.christopher@epa.gov

Kendall Moore (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
moore.kendall@epa.gov

89. This civil penalty is not deductible for federal tax purposes.

90. If Respondent does not timely pay the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

91. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount

overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

92. Respondent will provide funding for a Supplemental Environmental Project (SEP) designed to protect human health and the environment by conducting fluorescent light fixture replacements, retrofits, or upgrades at selected local public schools within EPA, Region 5. This SEP will involve the replacement, retrofit, or upgrade of fluorescent light fixtures (including capacitors and interior potting material) that may have formerly contained PCBs, and their replacement with newer, more energy efficient fixtures, at all schools selected by Respondent.

93. As of the effective date of this CAFO, Respondent has selected School City of East Chicago (East Chicago) as a local public school for the SEP.

94. Respondent will pay \$74,165.00 to complete the fluorescent light fixture upgrade project. East Chicago will direct the fluorescent light fixture work performed by a contractor selected by Respondent.

95. The specific details of the SEP, as well as the responsibilities of Respondent, East Chicago, and the contractor, will be set out in a Memorandum of Understanding to be negotiated between Respondent and East Chicago within thirty (30) days after the effective date of this CAFO. The Memorandum of Understanding must require that East Chicago approve the work performed by the contractor to retrofit fixtures that may have formerly contained PCBs within school buildings where children may be present prior to the release of SEP funds to the contractor.

96. Respondent has selected Huston Electric as a contractor to assist with implementation of the fluorescent light fixture retrofit, replacement, or upgrade for East Chicago.

97. Respondent must complete the SEP within one year of the effective date of this CAFO.

98. Within 30 days of the date that the SEP is completed, Respondent shall submit a SEP completion report to EPA. This report must contain the following information:

- a. Invoices and completion report prepared by Huston Electric (including the total number of fluorescent light fixtures replaced, the total number of fluorescent light ballasts replaced, a summary of the information contained on the shipping documents for the removed used lamps and fixtures, as well as the price for each new fixture);
- b. Description of any problems executing the SEP by Huston Electric or East Chicago and the actions taken to correct the problems;
- c. Respondent must also provide documentation from East Chicago approving the payment of fluorescent light fixture SEP invoices;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO.

99. Following receipt of the SEP completion report described in paragraph 98, EPA must notify Respondent in writing that:

- a. Respondent has completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP and the SEP report, and EPA will seek stipulated penalties under paragraph 101.

100. If EPA exercises options b or c in paragraph 99, Respondent may object in writing to the deficiency or determination notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. This 30 day period can be extended by mutual agreement of the parties. If the parties cannot reach an

agreement, EPA will give Respondent a written decision on its objection.

101. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in paragraph 102 below, if Respondent does not pay \$74,165.00 to complete the SEP, enter into a Memorandum of Understanding with East Chicago, and select a contractor to assist with the fluorescent light fixture SEP, Respondent must pay a penalty of \$82,000 (in addition to the civil penalty at paragraph 86);
- b. If Respondent does not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of Violation</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

102. If there are any funds remaining from the original \$74,165.00 as of the date that Respondent submits the SEP completion report, but EPA determines that Respondent made good faith and timely efforts to provide funding for the SEP, Respondent must pay an amount (in addition to the civil penalty at paragraph 86) which is the difference between \$74,165.00 and the amount that Respondent certifies it spent for the SEP (demonstrated by supporting documentation).

103. Respondent must pay any stipulated penalties under paragraph 101 within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 87 and 88 and will pay interest and nonpayment penalties on any overdue amounts.

104. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO, from the date of its execution, shall

include the following language: "This project was undertaken in connection with the settlement of the enforcement action In the Matter of Kester LLC, taken on behalf of the U.S. Environmental Protection Agency to enforce federal laws."

105. Respondent certifies as follows:

I certify that, as of the date of executing this CAFO, Kester LLC is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum. I further certify that the SEP is not a project that Kester LLC was planning or intending to perform or implement other than in settlement of counts resolved in this CAFO, and that Kester LLC has not received and will not receive credit for the SEP in any other enforcement action.

I certify that Kester LLC will not receive reimbursement for any portion of the SEP from another person or entity. I also certify that Kester LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

106. For federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

107. Respondent shall submit all notices and reports pursuant to the SEP by first class or electronic mail to Mr. Grubb and Mr. Moore at the addresses listed in paragraph 88.

108. In each report that Respondent submits as provided by the SEP, Respondent must certify that the report is true and complete by including the following signed statement by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

109. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision, and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

110. Any requirement of the SEP may be modified in writing by mutual agreement of the parties, including selecting an alternative or additional local public school for a fluorescent light fixture retrofit under paragraph 93 or an alternative use of remaining funds under paragraph 102.

General Provisions

111. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

112. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following valid email address: grubb.christopher@epa.gov (for Complainant), and

ssantangelo@kester.com and kbrown@itw.com (for Respondent). *See* 40 C.F.R. §§ 22.5-22.6.

113. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

114. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

115. This CAFO does not affect Respondent's responsibility to comply with TSCA, the PCB rule, and other applicable federal, state, and local laws.

116. Respondent certifies that it is complying with TSCA and the PCB rule.

117. The terms of this CAFO bind Respondent, and its successors and assigns.

118. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

119. Each party agrees to bear its own costs and attorney's fees in this action.

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120. This CAFO constitutes the entire agreement between the parties.

Kester LLC, Respondent

October 17, 2018
Date

Stephen Santangelo
Stephen Santangelo
Global Operations Director
Kester LLC

United States Environmental Protection Agency, Complainant

10/23/18
Date

Mandi Klezgor
Tinka G. Hyde
Director
Land and Chemicals Division

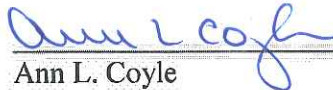
In the Matter of:
Kester LLC
Docket No. TSCA-05-2019-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/24/18

Date



Ann L. Coyle

Regional Judicial Officer

United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Kester LLC
Docket Number: TSCA-05-2019-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on October 24, 2018, in the following manner to the following addressees:

Copy by E-mail to Respondent: Stephen Santangelo, Kester LLC
ssantangelo@kester.com

Kenneth Brown, ITW
kbrown@itw.com

Copy by E-mail to Attorney for Respondent: Thor Ketzback, Bryan Cave Leighton Paisner LLP
thor.ketzback@bclplaw.com

Copy by E-mail to Attorney for Complainant: Christopher Grubb
grubb.christopher@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: October 24, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5