

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

-----X	:	
	:	
In the Matter of	:	
	:	
<b>Weston Solutions, Inc.</b>	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
	:	<u>FINAL ORDER</u>
Respondent.	:	
	:	
	:	Docket No.
Proceeding under Section 16(a) of	:	TSCA-02-2019-9101
the Toxic Substances Control Act.	:	
-----X	:	

NATIONAL HEARING  
 CLERK  
 2019 MAY 03 AM 7:57  
 4060  
 1000  
 1000

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

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

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

#### FINDINGS OF FACT

1. Respondent is Weston Solutions, Inc.
2. Respondent is responsible for certain remediation activities at the Hatco/LANXESS facility in and around 1020 King George Post Road (hereinafter "the Facility") under the terms of an April 8, 2005 Remediation Agreement with the property owner/operator.
3. By letter dated March 30, 2005, EPA issued to Respondent a TSCA Approval for PCB disposal pursuant to the specifications at 40 C.F.R. § 761.61(c).
4. On or about June 27, 2018, duly designated representatives of the EPA conducted an inspection of and at the Facility.
5. As a result of the inspection, EPA determined that Respondent had failed to comply with the conditions of the TSCA Approval for PCB disposal described in paragraph 3, above.
6. As a result of the inspection, EPA determined that Respondent had failed to mark the PCB Storage Area with the PCB mark M<sub>L</sub>, in accordance with the specifications and requirements of 40 C.F.R. § 761.40(a)(10).
7. As a result of the inspection, EPA determined that Respondent had failed to prepare complete PCB Annual Document Logs in accordance with the specifications and requirements 40 C.F.R. § 761.180(a)(2).
8. On or about December 12, 2018, Complainant sent to Respondent a Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act, which alleged that Respondent had violated the PCB regulations at 40 C.F.R. Part 761.
9. On February 27, 2019, the parties met for an informal settlement conference.

### CONCLUSIONS OF LAW

1. Respondent is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e), and set forth at 40 C.F.R. Part 761.
2. Respondent is a "person" within the meaning of 40 C.F.R. §761.3.
3. The approval referenced in paragraph 3 of the "Findings of Fact" section, above, constitutes an order under the authority of Section 6 of the TSCA, 15 U.S.C. § 2605.
4. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person to, *inter alia*, fail or refuse to comply with an order issued under Section 6 of TSCA, 15 U.S.C. § 2605.
5. The failure or refusal to comply with all of the conditions of the approval constitutes a violation of Section 6 of TSCA, 15 U.S.C. § 2605, and thus constitutes an unlawful act pursuant to Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
6. Failure to mark a PCB Storage Area is a violation of 40 C.F.R. § 761.40(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).
7. Failure to prepare complete PCB Annual Document Logs is a violation of 40 C.F.R. § 761.180(a)(2), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

### TERMS OF CONSENT AGREEMENT

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

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil

administrative proceeding for the violations alleged in the “Conclusions of Law” section, above; (b) neither admits nor denies the specific factual allegations contained in the “Findings of Fact” section, above; and (c) neither admits nor denies the assertions set forth in the “Conclusions of Law” section, above.

3. Respondent shall pay, by cashier’s or certified check, a civil penalty in the amount of **FORTY-ONE THOUSAND FIVE HUNDRED AND SIXTY DOLLARS (\$41,560)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

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

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

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

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

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

4. Full payment of the penalty described in paragraph 3, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts EPA alleges as described in paragraphs 5 through 7 in the "Findings of Fact" section, above, and paragraphs 5 through 7 in the "Conclusions of Law" section, above. 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.

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

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

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

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

10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at the Facility.

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

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

Vivian Chin, Environmental Engineer  
U.S. Environmental Protection Agency – Region 2  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-225  
Edison, NJ 08837

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

Mr. Steve Blarr  
SVP, General Counsel  
Weston Solutions, Inc.  
1435 Garrison St., Suite 100  
Lakewood, CO 80215

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

RESPONDENT:

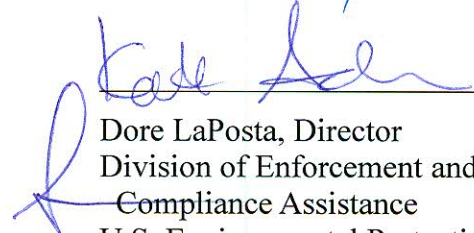
BY:   
Weston Solutions, Inc.

NAME: Steven F. Bloss  
(PLEASE PRINT)

TITLE: SVP, General Counsel

DATE: 5/6/2019

COMPLAINANT:

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

DATE: MAY 10 2019

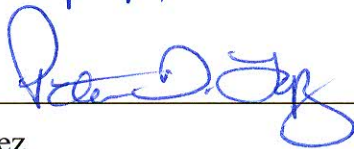
In the Matter of Weston Solutions, Inc.

Docket Number TSCA-02-2019-9101

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Weston Solutions, Inc., bearing Docket Number TSCA-02-2019-9101. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: 5/15/19



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



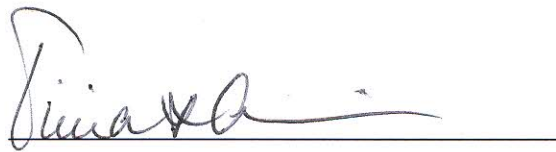
In the Matter of Weston Solutions, Inc.  
Docket Number TSCA-02-2019-9101

CERTIFICATE OF SERVICE

This is to certify that on the 20<sup>th</sup> day of May 2019, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2019-9101, by certified mail, return receipt requested, to:

Mr. Steve Blarr  
SVP, General Counsel  
Weston Solutions, Inc.  
1435 Garrison St., Suite 100  
Lakewood, CO 80215

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



A handwritten signature in cursive script, appearing to read "Diana", is written over a horizontal line.