

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2015 SEP 30 AM 8:46

REGIONAL HEARING
CLERK

In The Matter of:

Product Safety Labs, Inc.,

Respondent,

Proceeding Under Section 3008 of the
Resource Conservation and Recovery Act
as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. RCRA-02-2014-7106

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. §§ 6901 *et seq.* (referred to collectively as the “Act” or “RCRA”). The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279.

On September 30, 2014, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (the “Region”), issued a Complaint and Notice of Opportunity for Hearing (the “Complaint”) to Eurofins Product Safety Labs Inc.. The Complaint alleged that Eurofins Product Safety Labs Inc. violated requirements of the authorized New Jersey hazardous waste program. In a subsequent settlement meeting, Eurofins Product Safety Labs Inc. indicated that it had changed its name to Product Safety Labs, Inc. With the Respondent’s consent, Complainant in September 2015 amended the Complaint to change the name of the Respondent to Product Safety Labs, Inc.

The Complainant and Respondent Product Safety Labs, Inc. agree, by entering into this Consent Agreement and Final Order (“CA/FO”), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims in the Complaint without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). The parties have met and held settlement discussions. EPA’s recitation of Findings of

Fact and Conclusions of Law below is not intended, nor is it to be construed, as the Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

EPA'S FINDINGS OF FACT AND EPA'S CONCLUSIONS OF LAW

1. Respondent is Product Safety Labs, Inc. (hereinafter "Respondent" or "PSL").
2. Respondent provides research and testing services to the agricultural, chemical, pharmaceutical, dietary supplement/functional foods, personal care, animal health, biotechnology and household product industries; some test services offered include analytical testing for product discovery and development, pre-clinical safety evaluations, product registration, product stewardship, regulatory compliance and risk assessment.
3. Respondent's facility at issue in this case is located on 2394 US Highway 130, Dayton, New Jersey.
4. Respondent's business location constitutes a "Facility" as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by New Jersey Administrative Code ("N.J.A.C.") 7:26G-4.1(a).
5. Respondent's Facility is a "new hazardous waste management Facility" within the meaning of 40 C.F.R. § 260.10, as incorporated by reference by the N.J.A.C. 7:26G-4.1(a).
6. Respondent is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10, as incorporated by reference by the N.J.A.C. 7:26G-4.1(a).
7. Respondent has been and remains the "operator" of the Facility as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by N.J.A.C. 7:26G-4.1(a).
8. In carrying out its business, including research and testing services, Respondent has generated, and continues to generate, hazardous waste, as defined in 40 C.F.R. §261.3 as incorporated by reference by N.J.A.C. 7:26G-5.1, at its Facility.
9. In conducting its business, including research and testing services, Respondent has generated, and continues to generate, acute hazardous waste as set forth at 40 C.F.R. §261.30(a) as incorporated by reference by N.J.A.C. 7:26G-5.1, at its Facility.
10. At all times relevant to this matter, Respondent has been a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by N.J.A.C. 7:26G-4.1(a).
11. Based on hazardous waste manifest records, Respondent has been a Small Quantity Generator ("SQG") of hazardous waste, as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference by N.J.A.C. 7:26G-4.1(a), for the majority of the past four years.

12. A generator who generates between 100 kilograms (“kgs”) and 1,000 kilograms of non-acute hazardous waste in a calendar month at a facility is a SQG. 40 CFR §260.10, as incorporated by reference by N.J.A.C. 7:26G-4.1(a).
13. Based on hazardous waste manifest records, Respondent was a large quantity generator for the months of August and September 2013 because it generated more than 1 kg per month of acute hazardous waste identified in 40 C.F.R. § 261.33, as incorporated by reference by N.J.A.C. 7:26G-5.1(a).
14. On or about March 27, 2014, a duly designated representative of EPA conducted an inspection of the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine PSL's compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey's authorized hazardous waste regulations (the “Inspection”).
15. On or about May 13, 2014, EPA issued Respondent a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding its management of hazardous waste at its Facility.
16. On or about June 18, 2014, a duly authorized representative of the Respondent submitted its Response to the combined NOV and IRL.
17. On September 30, 2014, EPA issued a Complaint to the Respondent alleging the following violations of Subtitle C of RCRA and its implementing regulations:
 - a. Failure to ensure employees have hazardous waste training in violation of 40 C.F.R. § 264.16 as incorporated by reference by N.J.A.C. 7:26G-8.1.
 - b. Storage of hazardous waste at its Facility without interim status or a permit in violation of 40 C.F.R. § 270.1(c) as incorporated by reference by N.J.A.C. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.
18. Respondent has not yet filed an answer to the Complaint.
19. Respondent has obtained several extensions of time in which to file its Answer to the Complaint and such requests were granted by the Regional Judicial Officer.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 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. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies EPA’s Findings of Fact and/or EPA’s Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth

below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, Respondent in its operations at the Facility, is in compliance with applicable RCRA regulations promulgated or authorized pursuant to Subtitle C of RCRA, including New Jersey's authorized hazardous waste regulations. Respondent shall hereafter comply with these hazardous waste regulations including but not limited to those specifically cited in EPA's Complaint.
2. Respondent shall pay a civil penalty to EPA in the total amount of **SIXTY-FOUR THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$64,350)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF PRODUCT SAFETY LABS, INC.***, and shall bear thereon the **Docket Number RCRA-02-2014-7106**. If PSL chooses to make the payment by EFT, then PSL 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 Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
- 6) Name of Respondent: **Product Safety Labs, Inc.**
- 7) Case Number: **RCRA-02-2014-7106**.

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before forty-five (45) calendar days of the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, PSL shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Jeannie M. Yu, Esq.,
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866

and

Karen Maples,
Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1631
New York, New York 10007-1866

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) 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.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment.
3. Complainant shall mail to Respondent a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
 4. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
 5. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

6. Nothing in this document is intended or 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 has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
7. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
8. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
9. 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, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
10. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
11. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
12. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
13. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, 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.
14. Each party hereto shall bear its own costs and fees in this matter.
15. Pursuant to 40 C.F.R. § 22 31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT:

PRODUCT SAFETY LABS, INC.

BY:  _____

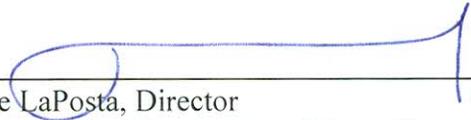
Authorizing Signature

NAME: _____
(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**



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

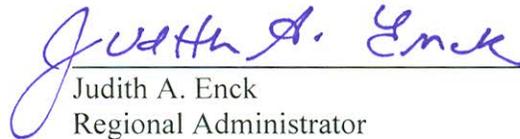
PLM
PATRICK DURACK FOR DORE LAPOSTA

DATE: SEPTEMBER 23, 2015

ES/p

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b) (3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9/23, 2015

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples
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:

Mr. Gary Wnorowski
President
Product Safety Labs, Inc.
2394 US Highway 130
Dayton, New Jersey, 08810

Dated: 9/30, 2015

