

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
: In the Matter of :
: :
: H.A. Schreck, Inc., :
: :
: Respondent. :
: :
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2008-9115

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 13 AM 11:58
REGIONAL HEARING
CLERK

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 order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), alleges that H.A. Schreck, Inc. ("Respondent") violated Section 6(e) of the 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 consent agreement and final order ("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 H.A. Schreck, Inc.
2. Respondent owns, operates, and/or controls the facility in and around 32 Van Wagner Road, Poughkeepsie, New York 12603 (hereinafter "Respondent's facility").
3. Respondent has owned, used and maintained, or stored for reuse or disposal "PCBs" and "PCB Items", as those terms are defined at 40 C.F.R. § 761.3, at Respondent's facility.
4. On November 2, 2006, Respondent distributed in commerce 300 gallons of used oil containing PCBs at a concentration over 50 ppm to Safety Kleen Systems, Inc.
5. On or about December 18, 2006, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the inspection").
6. On or about December 4, 2007, Complainant sent to Respondent a "Notice of Opportunity with Respect to Action under the Toxic Substances Control Act".
7. At the time of the inspection, Respondent was storing for disposal at Respondent's facility approximately 100 gallons of oil containing PCBs at a concentration over 50 parts per million ("ppm") in an above ground storage tank ("container") that was not marked with PCB mark "M_L", as described and illustrated in 40 C.F.R. § 761.45.

8. On the date of the inspection, EPA discovered that Respondent had spilled PCBs at a concentration over 50 ppm on the ground underneath Respondent's 275 gallon above ground storage tank.

9. On January 22, 2008 the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, 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. Failure or refusal to mark the container with the PCB Mark "M_L", as required by 40 C.F.R. § 761.40(a)(1), constitutes a failure or refusal to comply with 40 C.F.R. § 761.40(a), which is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

4. Spills and other uncontrolled discharges of PCBs are considered unauthorized disposals of PCBs under 40 C.F.R. § 761.60(a). Failure or refusal to comply with 40 C.F.R. § 761.60(a) is a violation of Section 15 (1) (C) of TSCA, 15 U.S.C. § 2614(1) (C).

5. Distributing in commerce used oil containing PCBs constitutes a failure to comply with the prohibition on PCB processing and distribution in commerce at Section 6(e)(3) of TSCA, 15 U.S.C. § 2605(e)(3), and 40 C.F.R. § 761.20(c), which is a violation of Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B)(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, 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 **Twenty Thousand Two Hundred Twenty Five Dollars (\$20,250)** payable in two installments of **Ten Thousand One Hundred Twenty Five Dollars (\$10,125)**, each to the "Treasurer of the United States of America." The checks 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.

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

Alternatively, payment may be 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
- 7) Docket Number

Promptly after payment has been made, Respondent shall send copies of these payments or furnish reasonable proof that such payments have been made to both:

Mr. Michael Bious
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment of the first installment must be received at the above address on or before 45 calendar days after 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"). Payment of the second installment must be received at the above address on or before January 14, 2009.

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 either payment is not received on or before its 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 \$15.00 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. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 761, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its 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.

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 waives any right it may have pursuant to 40 C.F.R. 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement

of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

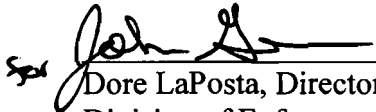
8. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

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

11. 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: Robert Schreck
H.A. Schreck, Inc.
NAME: Robert Schreck
(PLEASE PRINT)
TITLE: Secretary
DATE: 7/24/08

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

DATE: 7/31/08

In the Matter of H.A. Schreck, Inc.
Docket Number TSCA-02-2008-9115

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 H.A. Schreck, Inc., bearing Docket Number TSCA-02-2008-9115. 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: 8-5-08

Alan J. Steinberg

ALAN J. STEINBERG
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

In the Matter of H.A. Schreck, Inc.
Docket Number TSCA-02-2008-9155

CERTIFICATE OF SERVICE

This is to certify that on , I served a true and correct
copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket
Number TSCA-02-2008-9155, by certified mail, return receipt requested, to:

David A. Schreck, President
H.A. Schreck, Inc.
32 Van Wagner Road
Poughkeepsie, New York 12603

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 the original and one copy of the foregoing Consent
Agreement and Final Order.