



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
2890 WOODBRIDGE AVE.  
EDISON, NEW JERSEY 08837

MAR 30 2011

CERTIFIED MAIL-  
RETURN RECEIPT REQUESTED  
Article No. 7001 0320 0004 7788 7813

Harold B. Short, CEO  
Short's Oil Company, Inc.  
2327 Route 19  
Wellsville, NY 14895

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 APR -5 A 10:58  
REGIONAL HEARING  
CLERK

Re: In the Matter of Short's Oil Company, Inc.  
Docket No. TSCA-02-2011-9205

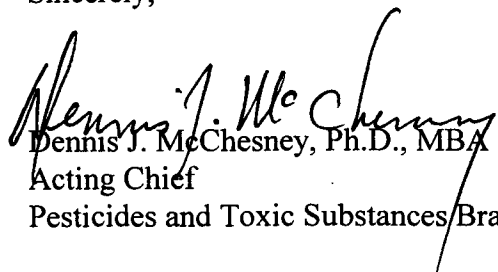
Dear Mr. Short:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Ann Finnegan of my staff at (732) 906-6177, should you have any questions regarding this matter.

Sincerely,

  
Dennis J. McChesney, Ph.D., MBA  
Acting Chief  
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 APR - 5 A 10: 58  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
Short's Oil Company, Inc., : CONSENT AGREEMENT  
 : AND  
Respondent. : FINAL ORDER  
 :  
 : Docket No.  
Proceeding under Section 16(a) of : TSCA-02-2011-9205  
the Toxic Substances Control Act. :  
-----X

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 Short's Oil

Company, Inc. (hereinafter "Short's Oil" or "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 Short's Oil Company, Inc.
2. Respondent owns, operates, and/or controls the facility in and around 2327 Route 19, Wellsville, New York (hereinafter "Respondent's facility").
3. On or about July 19, 2010, Respondent distributed used oil contaminated with PCBs over 50 parts per million to NOCO Energy Corporation, Tonawanda, New York.
4. Respondent asserts that it is required by the New York State regulations to accept used oil from the public, and that it had no knowledge that the used oil that was collected by NOCO Energy Corporation may have been contaminated with PCBs.
5. Complainant sent to Respondent a "Notice of Opportunity Related to Enforcement Action Under the Toxic Substances Control Act", which alleged the Respondent committed one violation of the regulations regarding distribution of PCBs in commerce.

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. Distribution of PCBs in commerce is a violation of the prohibition at 40 C.F.R. § 761.20(c), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 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 violation 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 **FIFTEEN THOUSAND SIX HUNDRED FORTY DOLLARS (\$15,640)**, payable in two installments of Seven Thousand Eight Hundred Twenty Dollars (\$7,820) each, to the "Treasurer of the United States of America". The checks shall each 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 checks shall be mailed to:

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

Alternatively, payments 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
- 7) Docket Number

Payment of the first installment must be received at the above address (or account of EPA) on or before **45 calendar days** after the effective date. The effective date of this Order shall be the date of the signature of the Final Order at the end of this document. Payment of the second installment must be received at the above address within six (6) months of the date of the first payment (the date by which payments must be received shall hereinafter be referred to as the "due dates"). If Respondent fails to pay any of the above payments by its due date, Respondent shall pay an additional stipulated penalty of One Thousand Dollars (\$1,000) for each such failure

unless, prior to the due date, Respondent has demonstrated good cause for a modification of the schedule and Complainant has agreed in writing to a modified payment schedule. Promptly after each payment has been made, Respondent shall send copies of each payment or furnish reasonable proof that each such payment has been made to both:

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

and

Ann Finnegan  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS 105  
Edison, New Jersey 08837

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 dates, 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. 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 in 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 notice under Section 16(a) of TSCA, 42 USC 2615(a), and 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, the Deputy Regional Administrator, or the Regional Judicial Officer 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 affect 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 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: Harold B Short  
Short's Oil Company, Inc.

NAME: Harold B Short  
(PLEASE PRINT)

TITLE: Pres.

DATE: 3/16/11

COMPLAINANT: Dore LaPosta

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

DATE: 3/24/11



In the Matter of Short's Oil Company, Inc.  
Docket Number TSCA-02-2011-9205

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Short's Oil Company, Inc., bearing Docket Number TSCA-02-2011-9205. 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 into 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: March 28, 2011

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

In the Matter of Short's Oil Company, Inc.  
Docket Number TSCA-02-2011-9205

CERTIFICATE OF SERVICE

This is to certify that on the 31 day of March 2011, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2011-9205, by certified mail, return receipt requested, to:

Harold B. Short, CEO  
Short's Oil Company, Inc.  
2327 Route 19  
Wellsville, NY 14895

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.

  
\_\_\_\_\_