



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

JUL 15 2008

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Mr. Michael Persico
Cycle Chem
201 South First Street
Elizabeth, NJ 07206

Re: In the Matter of Cycle Chem, Inc.
Docket No. TSCA-02-2008-9108

Dear Mr. Persico:

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 II.

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,

Kenneth S. Stoller, P.E., QEP, DEE, Chief
Pesticides and Toxic Substances Branch

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUL 17 PM 4:13
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. TSCA-02-2008-9108

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUL 17 PM 4:13
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 Respondent Cycle Chem Inc. ("Cycle Chem") 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 Cycle Chem 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 Cycle Chem Inc.
2. Respondent owns, operates, and/or controls the facility in and around 201 South First Street, Elizabeth, New Jersey (hereinafter "Respondent's facility").
3. On or about November 9, 2006, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility (hereinafter "the inspection").
4. Respondent exported PCBs without an exemption from the prohibition at 40 C.F.R. § 761.97(a).
5. Respondent failed to provide an Unmanifested Waste Report to the EPA Regional Administrator within 15 days after receiving unmanifested PCB waste in accordance with the specifications and requirements of 40 C.F.R. § 761.211.
6. Respondent failed to identify PCB waste submitted for off-site disposal on EPA Manifest 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
7. On February 2, 2008, Complainant sent to Respondent a "Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act ", which alleged that Respondent committed violations of the PCB regulations at 40 C.F.R. Part 761.
8. On April 2, 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 the above referenced Complaint, 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. Exporting PCBs without an exemption is a violation of the prohibition at 40 C.F.R. § 761.97(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).

4. Failure to submit an "Unmanifested Waste Report" to the EPA Regional Administrator within 15 days after receiving unmanifested PCB waste is a violation of 40 C.F.R. § 761.211, 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).

5. Failure to identify PCB waste submitted for off-site disposal on EPA Manifest form 8700-22 is a violation of 40 C.F.R. § 761.207(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).

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 Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "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 the jurisdictional allegations of the Complaint, and (b) neither admits nor denies the specific factual allegations contained in the Complaint.

3. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of **EIGHTEEN THOUSAND NINE HUNDRED DOLLARS (\$18,900)**, payable in two installments of **NINE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$9,450)** each, to the "Treasurer of the United States of America". Each 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 checks shall be mailed to:

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

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

Ann M. Finnegan, Life Scientist
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

The first payment must be received at the above address (or account of EPA) 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 by **December 31, 2008**.

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 any 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 \$15.00 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 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 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: [Signature]
Cycle Chem Inc.

NAME: Michael Pessica
(PLEASE PRINT)

TITLE: President

DATE: 6/23/08

COMPLAINANT:

[Signature] 1
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

DATE: Jul 3, 2008

In the Matter of Cycle Chem, Inc.
Docket Number TSCA-02-2008-9108

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Complaint bearing Docket No. TSCA-02-2008-9108, issued in the matter of Cycle Chem Inc., is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: 7-8-08

Alan J. Steinberg

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

Certificate of Service

This is to certify that on the 15th day of July, 2008, I have served a true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, bearing Docket Number TSCA-02-2008-9108, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (64 Federal Register 40138 (July 23, 1999)), by certified mail, return receipt requested, to:

Mr. Michael Persico
Cycle Chem
201 South First Street
Elizabeth, NJ 07206

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 Complaint and Notice of Opportunity for Hearing.


