



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 OCT 16 PM 1:21  
REGIONAL HEARINGS  
CLERK

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Charles B. Morgan, CEO  
Op-Tech Environmental  
6392 Deer Road  
Syracuse, NY 13206

Re In the Matter of Op-Tech Environmental  
Docket No. TSCA-02-2008-9203

Dear Mr. Morgan:

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 your payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Mr. Chester Norman of my staff at (732) 906-6811, should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth S. Stoller".

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

Enclosure

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of August 2008,  
I served a true and correct copy of the foregoing fully executed Consent Agreement and Final  
Order bearing Docket Number TSCA-02-2009-9102, by certified mail, return receipt requested,  
**to:**

Charles B. Morgan, CEO  
Op-Tech Environmental  
6392 Deer Road  
Syracuse, NY 13206

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.

A handwritten signature in black ink, reading "Eustace R. Norman". The signature is written in a cursive style with a long, sweeping underline.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2008 OCT 16 PM 1:21  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
Op-Tech Environmental Services Inc, : CONSENT AGREEMENT  
 : AND  
Respondent. : FINAL ORDER  
 :  
 : Docket No.  
Proceeding under Section 16(a) of : TSCA-02-2008-9203  
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 Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, Op-Tech Environmental Services ("Respondent"), on March 21, 2008.

The Complaint charged Respondent with 2 violations of 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).

### FINDINGS OF FACT

1. Respondent is Op-Tech Environmental Services Inc.
2. Respondent owns, operates, and/or controls the facility in and around 370 Route 34, Waverly, New York 14892 (hereinafter "Respondent's facility").
3. On or about October 4, 2007, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. As a result of the inspection, EPA determined that Respondent failed to identify PCB waste submitted to Safety Kleen on April 20, 2007 for off-site disposal on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
5. As a result of the inspection, EPA determined that Respondent failed to identify PCB waste submitted to Safety Kleen on April 23, 2007 for off-site disposal on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
6. Respondent asserts that Respondent has a screening process in place at its facility whereby it performs field tests on incoming loads of used oil to detect organic chlorines, which would indicate the presence of PCBs. Respondent's sample log for April 2007 indicates no detection of organic chlorines. Upon notification of the violation, Respondent sampled all tanks at its facility and found no detectable PCBs.
7. Respondent asserts that Respondent has not been given the opportunity by Safety Kleen to verify the chain of custody for its samples, and that at least one other retained sample from another Safety Kleen customer that contributed to the contaminated load tested positive for some level of PCBs.
8. On May 8, 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. 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), 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. The payment of the penalty and signing of this Agreement are not an admission by Respondent of any violation of the Toxic Substances Control Act, nor is it an admission of the allegations or conclusions set forth in the Agreement.
3. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of **TWELVE THOUSAND TWO HUNDRED DOLLARS (\$12,200)** 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 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 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). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that 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, NY 10007

and

Chester Norman  
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 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. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protection and improvements. Within 30 days of receiving a copy of this Agreement signed by the Regional Administrator, Respondent shall initiate the purchase and installation of a gas chromatograph at Respondent's facility and shall, within 90 days of this installation, initiate a sampling program for the purpose of identifying unmanifested PCBs in incoming shipments and preventing the improper dilution and/or disposal of such PCBs. This program will be conducted at no cost to Respondent's customers and shall remain in place at Respondent's facility for a period not less than five years. This SEP is further described in Respondent's SEP Proposal, attached hereto as Exhibit A and incorporated herein by reference.

5. The total expenditure for the SEP shall be approximately \$251,000, in accordance with the specifications set forth in the Scope of Work. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as described below.

6. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

7. Respondent shall continuously use or operate the sampling system initiated as the SEP at Respondent's facility for a period not less than five years.

8. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is operating properly and in conformity with the representations made herein.

9. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language,

"This project was undertaken in conjunction with a U.S. Environmental Protection Agency Consent Order under 40 C.F.R. Part 761."

10. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

11. Respondent shall provide documentation of the SEP described in this Consent Agreement as follows:

(a) Respondent shall notify EPA, in writing, of the date when the chromatograph is installed and when the sampling program will be initiated. Such notification shall be submitted within 30 days of the purchase of this equipment to EPA at the address cited below:

Chester Norman, Pesticides and Toxic Substances Branch  
Division of Enforcement and Compliance Assistance  
US Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

(b) Respondent shall submit Periodic SEP Status Reports to EPA for each calendar year in which the SEP is in operation. These reports shall be submitted to EPA at the address cited above, and shall be submitted by January 30th of the following year (e.g., the 2008 report shall be submitted by January 30, 2009). The Periodic SEP Status Reports for each calendar year shall contain the following information:

- (i) a narrative description of the SEP as implemented,
- (ii) a list of itemized costs for that year, documented by copies of purchase orders and receipts or canceled checks,
- (iii) a description of any operating problems encountered and the solutions thereto, and
- (iv) a summary of number of samples analyzed, highlighting the number of samples revealing PCBs at any level in the waste and the number of samples revealing PCBs over 50 parts per million in the waste, and for each sample that reveals PCBs over 50 parts per million in the waste, a report including the generator's information (name, address, etc.), incoming shipping papers, analytical results, outgoing shipping papers, and ultimate disposition of the waste.

(c) Respondent shall submit a SEP Completion Report to EPA by January 30, 2014. The SEP Completion Report shall contain the following information:

- (i) a detailed description of the SEP as implemented,
- (ii) total itemized costs, documented by copies of purchase orders and receipts or canceled checks,
- (iii) a description of any operating problems encountered and the solutions thereto,
- (iv) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order, and



- (vi) a description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

(d) In all documents or reports, including, without limitation, the SEP Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

(e) Respondent agrees that failure to submit the SEP Completion Report or any Periodic Reports required by subsections (b) and (c) above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 12, below.

12. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph 4, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 5, above, Respondent shall be liable for stipulated penalties.

(a) Respondent shall pay stipulated penalties according to the provisions set forth below:

- (i) For a SEP which has not been completed satisfactorily pursuant to paragraph 4, Respondent shall pay a stipulated penalty to the United States in the amount of \$36,550.
- (ii) For failure to submit the SEP Completion Report required by paragraph 11(c) above, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after January 30, 2014 until the report is submitted.
- (iii) For failure to submit any other report required by paragraph 11 above, Respondent shall pay a stipulated penalty in the amount of \$50.00 for each day after the report was originally due until the report is submitted.

(b) Stipulated penalties for subparagraphs (ii) and (iii) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

(c) Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 3 above. Interest and late charges shall be paid as stated in paragraph 3 herein.

13. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

14. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations in the Complaint. 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.

15. 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.

16. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or the accompanying Final Order.

17. 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.

18. 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.

19. 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.

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


21. 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:   
Op-Tech Environmental Services Inc.

NAME: CHARLES B. MORGAN  
(PLEASE PRINT)

TITLE: CEO

DATE: 9/24/08

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


DATE: 10/6/08

In the Matter of Op-Tech Environmental Services Inc.  
Docket Number TSCA-02-2008-9203

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-02-2008-9203, issued in the matter of Op-Tech Environmental Services 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: 10/8/08

  
for Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway