

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. Environmental Protection Agency
2020 JUN 16 PM 7:05
REGIONAL CLERK

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In the Matter of :
:
Eden Wood Realty LLC, :
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2020-9103

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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Eden Wood Realty LLC (hereinafter "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 Eden Wood Realty LLC.
2. Respondent owns, operates, and/or controls the facility commonly known as Patriot Greens, located in and around 652 East Main Street and Radel Avenue and identified as Block 329, Lots 3.01, 13.01, and 14 in Bridgewater, New Jersey (hereinafter "Respondent's facility").

3. In 2016, in connection with the proposed residential development of Respondent's facility, Respondent began environmental investigation and remediation of hazardous substances that included a July 20, 2018 application to the EPA for "Self-Implementing On-site Cleanup and Disposal of PCB Remediation Waste". EPA approved this application by letter dated December 7, 2018.

4. By letter dated November 9, 2018, ACV Enviro/Cycle Chem of Elizabeth, New Jersey notified EPA Region 2 that they had received a load of PCB waste from Respondent's facility that was not identified as PCB waste on the hazardous waste manifest.

5. On or about June 12, 2019, duly designated representatives of the EPA conducted an inspection of and at Respondent's office in Whippany, New Jersey (hereinafter "the inspection"). The inspection was conducted in order to determine regulatory compliance with TSCA at Respondent's facility.

6. As a result of the inspection, EPA determined that Respondent failed to identify PCB waste submitted for off-site disposal from Respondent's facility on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).

7. As a result of the inspection, EPA determined that Respondent failed to label PCB waste being stored for disposal on Respondent's facility with the PCB mark M_L, as described and

illustrated at 40 C.F.R. § 761.45, in accordance with the specifications and requirements of 40 C.F.R. § 761.40.

8. As a result of the inspection, EPA determined that Respondent failed to remove bulk PCB remediation waste from the temporary onsite storage allowed for 180 days in accordance with the specifications and requirements of 40 C.F.R. §§ 761.65(b) and (c)(9).

9. Respondent asserts that it is a real estate investor and developer and had no role in the presence or discharge of PCBs at Respondent's facility.

10. Respondent asserts that it hired and relied on the expertise of a third party professional environmental consultant to assist with the management of PCBs on Respondent's facility, as well as a third party waste hauling company to transport and dispose of PCBs from Respondent's facility.

11. On October 21, 2019, the parties met for an informal settlement conference related to the above-cited matters.

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 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).

4. Failure to label PCB waste with the PCB Mark M_L, as described and illustrated at 40 C.F.R. § 761.45, is a violation of 40 C.F.R. § 761.40(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).

5. Storage of PCB bulk remediation waste at the site of generation for more than 180 days in an area that does not meet the requirements of 40 C.F.R. § 761.65(b), is a violation of 40 C.F.R. §§ 761.65(b) and (c)(9), 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 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 at Respondent's facility.
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 **EIGHTY THOUSAND ONE HUNDRED SEVENTY THREE DOLLARS (\$80,173)** 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 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; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from 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”).

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 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. Full payment of the penalty described in paragraph 3, above, shall only resolve Respondent’s liability for federal civil penalties for the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. Payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 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 agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying 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, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

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. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at Respondent's facility.

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

12. Any responses, documentation, and other communications submitted to EPA in connection with this Consent Agreement shall be sent to:

Ann Finnegan, TSCA Enforcement Coordinator
 U.S. Environmental Protection Agency – Region 2
 Pesticides and Toxic Substances Compliance Branch
 2890 Woodbridge Avenue, MS-225
 Edison, NJ 08837

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Thomas Stagen, Manager
 Eden Wood Realty LLC
 47 Parsippany Road
 Whippany, NJ 07981

13. 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: Dennis Schepker
Eden Wood Realty LLC

NAME: DENNIS SCHEPKER
(PLEASE PRINT)

TITLE: CONTROLLER

DATE: 12/23/2019

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

JAN - 8 2020

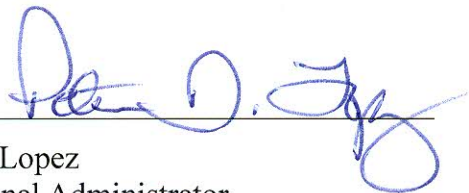
DATE: _____

In the Matter of Eden Wood Realty LLC
Docket Number TSCA-02-2020-9103

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 Eden Wood Realty LLC, bearing Docket Number TSCA-02-2020-9103. 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: 1/9/2020



Peter Lopez
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 13 day of January 2020, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2020-9103, by certified mail, return receipt requested, to:

Mr. Dennis Schepker, Controller
Eden Wood Realty LLC
47 Parsippany Road
Whippany, NJ 07981

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.

