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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
Silence, Inc.;)
Respondent.)

Docket No. TSCA-10-2009-0003

I. STATUTORY AUTHORITY

1.1 This administrative proceeding is simultaneously being commenced and concluded by issuance of this Consent Agreement along with the accompanying Final Order. The authority for this procedure is set forth at 40 C.F.R. § 22.13(b). This Consent Agreement contains terms for the settlement of claims between the United States Environmental Protection Agency ("EPA") and Silence, Inc. ("Respondent"), doing business as Midas Muffler. The pursuit of these claims by EPA is authorized by Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615.

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.3 Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in accordance with the

CONSENT AGREEMENT AND FINAL ORDER
DOCKET NO. TSCA-10-2009-0003

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

1 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"
2 40 C.F.R. Part 22, EPA hereby issues, and Silence, Inc. hereby agrees to issuance of the Final
3 Order contained in Part V of this CAFO.

4 **II. ALLEGATIONS**

5 2.1 For the purpose of this proceeding, Respondent admits the jurisdictional allegations
6 contained herein. While neither admitting nor denying the specific factual allegations set forth in
7 this section, Respondent waives the right to contest those allegations.

8 2.2 Respondent is a corporation and thus a "person" as defined by EPA's TSCA
9 regulations governing the distribution, disposal, storage, marking, and use of polychlorinated
10 biphenyls ("PCBs"). 40 C.F.R. § 761.3.

11 2.3 Respondent owns and operates a facility located at 12005 NE 12th Street in Bellevue,
12 Washington. Respondent sent a shipment of 150 gallons of used oil from this facility which arrived
13 at Emerald Recycling Services, Inc. ("Emerald") on October 5, 2007.

14 2.4 Respondent sent this oil for recycling and reuse, and did not inform Emerald that the
15 oil contained PCBs. The container of used oil did not have any markings which indicated the
16 presence of PCBs. Respondent did not notify EPA in advance of this shipment about the transport of
17 PCBs, and did not obtain an EPA identification number for the transport of PCBs. Emerald placed
18 the used oil into a bulk oil storage tank.

19 2.5 Subsequent testing conducted by Emerald showed that the used oil shipped by
20 Respondent contained PCBs at a concentration of 93 parts per million (ppm). The PCB-
21 contamination in the oil shipped by Respondent caused all of the oil in the tank at Emerald to
22 become contaminated with PCBs. This resulted in a total of 25,324 kilograms of PCB-contaminated
23 oil. Emerald arranged for the proper disposal of this PCB-contaminated oil.

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1 **III. VIOLATIONS**

2 3.1 Respondent's failure to mark with a PCB label the container of PCB-
3 contaminated oil is a violation of 40 C.F.R. § 761.40.

4 3.2 Respondent's failure to notify EPA in advance of the shipment of the PCB-
5 contaminated oil is a violation of 40 C.F.R. § 761.205.

6 3.3 Respondent's failure to obtain an EPA identification number in advance of the
7 shipment of PCB-contaminated oil is a violation of 40 C.F.R. § 761.202.

8 3.4 Respondent's failure to prepare a manifest on "EPA Form 8700-22" for the
9 shipment of PCB-contaminated oil is a violation of 40 C.F.R. § 761.207.

10 3.5 Respondent's actions in violation of the above-cited regulations are unlawful
11 according to Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and subject Respondent to the
12 payment of a civil penalty in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

13 **IV. CONSENT AGREEMENT**

14 4.1 For purposes of this proceeding, Respondent stipulates that EPA has jurisdiction
15 over the subject matter alleged herein. For purposes of this proceeding, Respondent neither
16 admits nor denies the specific factual allegations outlined above.

17 4.2 For purposes of this proceeding, Respondent expressly waives any right to appeal
18 the Final Order set forth in Part V, below.

19 4.3 As required under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA
20 has taken into account the nature, circumstances, extent, and gravity of the alleged violation; the
21 Respondent's ability to pay, history of prior such violations, and degree of culpability; the effect
22 on Respondent's ability to continue to do business; and such other matters as justice may require.

23 After considering all of these factors, EPA has determined and Respondent agrees that an
24

1 appropriate penalty to settle this action is in the amount of nine thousand three hundred dollars
2 (\$9,300).

3 4.4 Respondent consents to issuance of the Final Order set forth below in Part V and
4 agrees to pay the total civil penalty set forth above in Paragraph 4.4 within 30 days of the
5 effective date of this Final Order.

6 4.5 Payment by Respondent under this CAFO shall be by cashier's or certified check
7 made payable to the order of "Treasurer, United States of America." The check shall be
8 submitted to the following address:

9
10 U.S. Environmental Protection Agency
11 Fines and Penalties
12 Cincinnati Finance Center
13 P.O. Box 979077
14 St. Louis, MO 63197-9000

15 4.6 Along with payment, Respondent shall provide a transmittal letter which sets forth
16 the information contained in the caption of this case, including the case title and docket number,
17 together with a description of the obligation being satisfied by Respondent. At the time of
18 payment, a copy of the check and transmittal letter shall also be provided to Daniel Duncan, EPA
19 Region 10 Office of Compliance and Enforcement, and to Carol Kennedy, Regional Hearing
20 Clerk. The mailing address for Mr. Duncan is 1200 Sixth Ave., Suite 900, OCE-084,
21 Seattle, WA 98101. The address for Ms. Kennedy is 1200 Sixth Ave., Suite 900, ORC-158,
22 Seattle, WA 98101.

23 4.7 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due
24 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and
25 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
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1 assessed penalty under TSCA. In any such collection action, the validity, amount, and
2 appropriateness of the penalty are not subject to review.

3 4.8 Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should Respondent
4 fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall
5 be responsible for payment of interest on any unpaid portion of the assessed penalty shall at the rate
6 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective
7 date of the accompanying Final Order, provided, however, that no interest shall be payable on any
8 portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

9 4.9 The penalty assessed by this CAFO, including any additional costs incurred under the
10 Paragraphs above, represents an administrative civil penalty assessed by EPA and shall not be
11 deductible for purposes of federal taxes.

12 4.10 The undersigned representative of Respondent certifies that he is fully authorized
13 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

14 4.11 This CAFO is binding upon Respondent, including all officers, directors, servants,
15 employees, agents, successors, and assigns of Respondent.

16 4.12 Each party shall bear its own costs in bringing or defending this action.

17 4.13 The above provisions are STIPULATED AND AGREED upon by Respondent and
18 EPA.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

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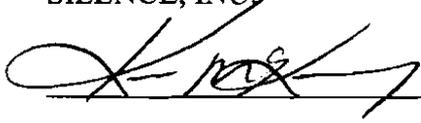
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DATED:

4/18/09

SILENCE, INC.



DATED:

4/23/09

U.S. ENVIRONMENTAL PROTECTION AGENCY:



CLIFFORD J. VILLA
Assistant Regional Counsel
For Complainant

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V. FINAL ORDER

5.1 The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2 This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Parts II and III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations issued thereunder.

5.3 This Final Order shall become effective upon filing.

SO ORDERED this 29th day of April, 2009.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Silence, Inc., DOCKET NO.: TSCA-10-2009-0003** was filed with the Regional Hearing Clerk on April 30, 2009.

On April 30, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Clifford Villa, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on April 30, 2009, to:

Mr. Kevin McKenney
Silence Inc, dba Midas Auto Service
17311 135th Ave NE, Suite A450
Woodinville, WA 98072

DATED this 30th day of April 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10