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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:)	Docket No. TSCA-09-2012- <u>0911</u>
)	
11)	
12 Belfor Environmental,)	CONSENT AGREEMENT
)	AND FINAL ORDER
13 Respondent.)	pursuant to 40 C.F.R. §§ 22.13(b),
)	22.18(b)(2), and 22.18(b)(3)
14)	

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Belfor
17 Environmental (the "Respondent") agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 16(a) of the Toxic
21 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for assessment of a civil administrative
22 penalty against Respondent for violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to
23 comply with implementing regulations governing polychlorinated biphenyls ("PCBs") set forth at
24 40 C.F.R. Part 761.

25 2. Complainant is the Director of the Waste Management Division in EPA, Region IX.
26 The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to
27 bring this action under TSCA by EPA Delegation Order Number 12-2-A, dated May 11, 1994.
28 The Regional Administrator of Region IX further delegated the authority to bring this action

1 under TSCA to the Director of the Waste Management Division by EPA Regional Order Number
2 1260.06B, dated February 11, 2008.

3 3. Respondent is Belfor Environmental, a corporation headquartered in Denver, Colorado
4 that performs emergency response, decontamination, and waste handling projects for others
5 parties.

6 **B. STATUTORY AND REGULATORY BASIS**

7 4. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person
8 to fail or refuse to comply with any rule promulgated or order issued under Section 6 of TSCA,
9 15 U.S.C. § 2605.

10 5. Pursuant to Section 6(c) of TSCA, 15 U.S.C. § 2605(e), EPA promulgated regulations
11 on May 31, 1979 (44 Fed. Reg. 31542) setting forth requirements and use prohibitions for the
12 manufacturing, processing, and distribution in commerce of PCBs. These regulations, as
13 amended, are presently codified at 40 C.F.R. Part 761.

14 6. 40 C.F.R. § 761.207, promulgated into regulation by EPA on December 21, 1989 (54
15 Fed. Reg. 52752) pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, requires that generators of
16 PCB waste with a PCB concentration greater than or equal to 50 ppm that is being stored at or
17 disposed of off-site must prepare a manifest on EPA Form 8700-22 (a "Uniform Hazardous
18 Waste Manifest" form) that specifies the identity or type of PCB waste, the earliest date of
19 removal from service for disposal, and the weight in kilograms of the PCB waste. This manifest
20 must also designate one off-site commercial storage or disposal facility approved under the
21 regulations for the commercial storage or disposal of PCB waste described on the manifest, and it
22 must accompany the PCB waste to its designated destination.

23 7. 40 C.F.R. § 761.79, promulgated into regulation by EPA on June 29, 1998 (63 Fed.
24 Reg. 35457) pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, establishes extensive
25 decontamination standards and procedures for the removal of PCBs from, among other materials,
26 non-porous surfaces. These requirements include (1) decontamination standards based on
27 materials and post-decontamination use, (2) self-implementing decontamination procedures that
28

1 describe detailed methodologies involving solvent flushing, soaking, and drainage,(3) sampling
2 and record-keeping requirements, and (4) remediation waste disposal protocols.

3 C. ALLEGED VIOLATIONS

4 8. Respondent is a corporation and therefore fits within the definition of "person" as that
5 term is defined by 40 C.F.R. § 761.3.

6 9. On December 29, 2009, Respondent contracted with Asarco LLC to assist with the
7 removal and proper treatment, storage, and disposal of four large transformers filled with PCB-
8 containing oil with a PCB concentration greater than or equal to 50 ppm at the Asarco Mission
9 Mine in Sahuarita, Arizona.

10 10. On March 30, 2010, Respondent's employees went to the Asarco Mission Mine and
11 drained the PCB-containing oil with a PCB concentration greater than or equal to 50 ppm from
12 the four transformers and placed it into six plastic totes.

13 11. By draining the PCB-containing oil with a PCB concentration greater than or equal to
14 50 ppm from the four transformers, Respondent became a "generator of PCB waste," as that term
15 is defined at 40 C.F.R. § 761.3, for the purposes of 40 C.F.R. § 761.207.

16 12. This PCB-containing oil with a PCB concentration greater than or equal to 50 ppm
17 constituted "PCB waste," as that term is defined at 40 C.F.R. § 761.3, for the purposes of 40
18 C.F.R. § 761.207.

19 13. On April 1, 2010, Respondent shipped the six totes with the PCB waste to Veolia
20 Environmental Services ("Veolia"), an off-site commercial storage facility approved by EPA, for
21 the storage and eventual disposal of such waste.

22 14. The three manifests provided by Respondent that accompanied the PCB waste sent to
23 Veolia (as the designated off-site storage facility) were not prepared on EPA Form 8700-22, a
24 "Uniform Hazardous Waste Manifest" form, but instead on a "Non-Hazardous Waste Manifest"
25 form.

26 15. Respondent's failure to provide EPA Form 8700-22 to accompany the PCB waste it
27 sent to the off-site storage facility designated in its manifests violated the requirements of 40
28 C.F.R. § 761.207.

1 16. By violating 40 C.F.R. § 761.207 on or about April 1, 2010, Respondent violated
2 Section 15(1)(C) of TSCA.

3 17. On or about April 6-10, 2010, Respondent, after having drained the PCB-containing
4 oil from the four Asarco Mission Mine transformers, attempted to perform an on-site, self-
5 implementing decontamination of the four drained transformer carcasses as non-porous surfaces
6 rather than shipping them to Veolia for off-site storage and eventual disposal along with the
7 drained PCB waste. The reason for this attempted decontamination, unauthorized by Asarco
8 LLC, was to avoid having to treat the four transformer carcasses as PCB waste for disposal
9 purposes.

10 18. In attempting this decontamination, Respondent did not comply with the
11 requirements established at 40 C.F.R. § 761.79 by (1) failing to meet the decontamination
12 standards set forth at 40 C.F.R. § 761.79(b) (particularly those relating to wipe sampling
13 procedures and sample location selections), (2) failing to follow the self-implementing
14 decontamination procedures set forth at 40 C.F.R. § 761.79(c) (particularly those relating to
15 solvent soaking), and (3) failing to meet the record-keeping requirements set forth at 40 C.F.R. §
16 761.79(f).

17 19. Respondent's failure to meet decontamination standards, follow decontamination
18 procedures, or maintain necessary decontamination records violated the requirements of 40
19 C.F.R. § 761.79.

20 20. By violating 40 C.F.R. § 761.79 on or about April 6-10, 2010, Respondent violated
21 Section 15(1)(C) of TSCA.

22 21. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
23 Inflation Adjustment Rule, 40 C.F.R. Part 19, as amended, provide that any person who violates
24 Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in
25 an amount not to exceed \$37,500 for each such violation that occurred on or after January 12,
26 2009. Under the EPA's Polychlorinated Biphenyls Enforcement Response Policy, dated August
27 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the two violations cited
28 above would merit an unadjusted, gravity-based civil penalty of SEVENTY-FIVE THOUSAND

1 DOLLARS (\$75,000) given the nature, circumstances, and extent of the violations alleged.

2 D. RESPONDENT'S ADMISSIONS

3 22. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
4 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
5 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
6 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
7 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
8 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
9 contained in this CAFO.

10 E. AUDIT POLICY

11 23. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure,*
12 *Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit
13 Policy") has several important goals, including encouraging greater compliance with the laws and
14 regulations which protect human health and the environment and reducing transaction costs
15 associated with violations of the laws EPA is charged with administering. If certain specified
16 criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit
17 Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental
18 audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4)
19 discovery and disclosure independent of government or third party plaintiff; (5) correction and
20 remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and
21 (9) cooperation.

22 24. Complainant has determined that Respondent has satisfied all of the criteria under the
23 Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly,
24 the civil penalty assessed in this matter is ZERO DOLLARS (\$0).

25 25. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is
26 based upon documentation that Respondent has provided to establish that it satisfies these
27 criteria. Complainant and Respondent agree that, should any material fact upon which
28 Complainant relied in making its finding subsequently prove to be other than as represented by

1 Respondent, this CAFO may be voided in whole or in part.

2 **F. RETENTION OF RIGHTS**

3 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
4 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
5 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
6 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
7 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
8 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
9 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
10 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

11 27. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
12 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
13 and permits.

14 **G. ATTORNEYS' FEES AND COSTS**

15 28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
16 this proceeding.

17 **H. EFFECTIVE DATE**

18 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
19 effective on the date that the Final Order contained in this CAFO, having been approved and
20 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

21 **I. BINDING EFFECT**

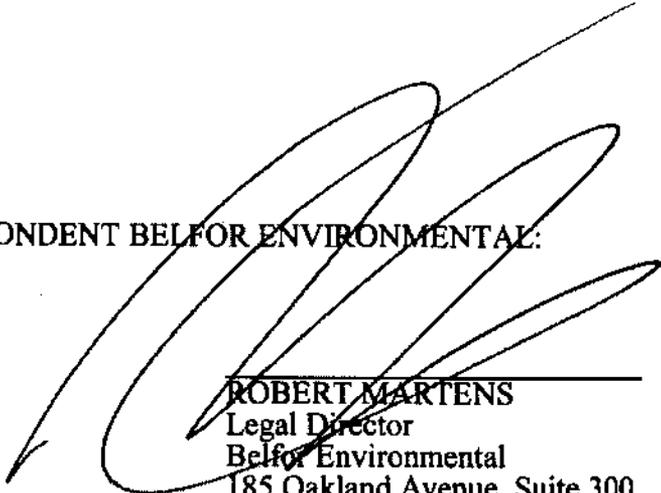
22 30. The undersigned representative of Complainant and the undersigned representative of
23 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
24 of this CAFO and to bind the party he or she represents to this CAFO.

25 31. The provisions of this CAFO shall apply to and be binding upon Respondent and its
26 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
27 and assigns.

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FOR RESPONDENT BELFOR ENVIRONMENTAL:

8.10.12
DATE



ROBERT MARTENS
Legal Director
Belfor Environmental
185 Oakland Avenue, Suite 300
Birmingham, MI 48009-3433

FOR COMPLAINANT EPA:

9/20/12
DATE



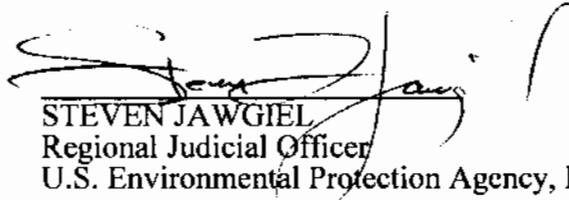
JEFF SCOTT
Director, Waste Management Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Belfor Environmental having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2012- 0011) be
4 entered, and Respondent shall comply with the terms and conditions set forth in the Consent
5 Agreement.

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7
8 09/26/12
9 DATE

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STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of BELFOR ENVIRONMENTAL (Docket No: TSCA-09-2012-00) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

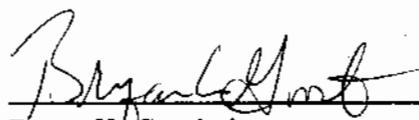
A copy was mailed via CERTIFIED MAIL to:

Mr. Robert Martens
Legal Director
Belfor Environmental
185 Oakland Avenue, Suite 300
Birmingham, MI 48009-3433

CERTIFIED MAIL NUMBER: 7005 2570 0001 6436 5412

And an additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/26/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No.
Return Receipt Requested

SEP 26 2012

In reply, refer to WST-3

Robert Martens
Legal Director
Belfor Environmental
185 Oakland Avenue, Suite 300
Birmingham, MI 48009-3433

Re: Consent Agreement and Final Order
In the Matter of Belfor Environmental

Dear Mr. Martens:

Please find enclosed the final executed Consent Agreement and Final Order ("CA/FO") negotiated between the United States Environmental Protection Agency, Region IX ("EPA"), and Belfor Environmental ("Belfor").

This CA/FO sets out the terms for resolution of the Toxic Substances Control Act ("TSCA") administrative civil penalty action against Belfor for alleged violations of the polychlorinated biphenyls ("PCBs") requirements at the Belfor facility located in Phoenix, Arizona.

Belfor's full compliance with the payment terms of this CA/FO and completion of all tasks in accordance with the terms of this CA/FO will close this case. If you have any questions regarding the PCB regulations governing your operations or the rules which govern the proceedings terminated by the enclosed document, please contact Christopher Rollins of my staff at (415) 947-4166, or Edgar Coral, in the Office of Regional Counsel, at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosure