

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed March 16, 2021 @ 10:11 am

USEPA – Region II
Regional Hearing Clerk

In the Matter of
Eikon Planning & Design, LLC,
Respondent.
Proceeding under the Toxic Substances Control Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. TSCA-02-2021-9105

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended ("TSCA" or "the Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("CROP"), set out at 40 Code of Federal Regulations ("C.F.R.") Part 22. Pursuant to 40 C.F.R. § 22.13(b) of the CROP, where the parties agree to settlement of 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).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2614 ... of this title [Section 15 of TSCA, 15 U.S.C. § 2614] shall be liable to the United States for a civil penalty... ." EPA alleges that Eikon Planning & Design, LLC, (hereinafter "Respondent") violated Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division ("Complainant") of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

The Complainant and Respondent hereby agree that settling this matter by entering into this CAFO, pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation. No findings of fact or conclusions of law have

been made in or by an administrative or judicial tribunal. Respondent neither admits or denies the specific factual allegations contained herein.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a New Jersey limited liability company.
2. Respondent is a limited liability corporation ("LLC") formed under the laws of the State of New Jersey.
3. Respondent's headquarters is located at 221 High Street, Hackettstown, New Jersey 07840.
4. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3 and is subject to TSCA and the regulations promulgated thereunder.
5. Respondent is an environmental consulting firm that provides remediation and environmental management services.
6. Since approximately 2012, Respondent has served as an environmental consultant for P.T.I. Associates, LLC (hereinafter "P.T.I."), the owner of the property located at Block 707, Lot 35 and Block 405, Lot 3, Saddle Brook, New Jersey (hereinafter "the Facility").

History of Remediation Activities at the Facility

7. In 2003, P.T.I. initiated an environmental assessment using the services of another consulting firm, EcolSciences, Inc. ("EcolSciences") which revealed the presence of PCBs in the soil at the Facility in concentrations above the New Jersey Soil Remediation Standard (hereinafter "NJSRS") of 0.2 parts per million ("ppm").
8. Additional testing for PCBs by EcolSciences was performed after 2004 for 12 select areas of concern (hereinafter "AOCs") located within a portion of the Facility.
9. The AOC at the Facility associated with the former machine shop and compressor vent discharge area was designated "AOC12."
10. Multiple areas of AOC12 were identified by EcolSciences with PCBs above NJSRS levels. PCBs were also identified within other site AOCs.
11. In 2005, EcolSciences conducted delineation sampling, removed a portion of the interior concrete floor, and conducted soil remediation (soil excavation) of PCBs in AOC12.

Respondent's remediation activities at the Facility

12. In 2012, P.T.I. hired Respondent to provide environmental consulting-related services and conduct additional investigation and remediation of various site AOCs, which included excavations in AOC12.
13. Respondent provided environmental consulting related services at the Facility on behalf of PTI, which included AOC 12.
14. Following initial soil excavation procedures in March 2013, a total of three soil samples were collected for PCB analysis from three different excavated locations at AOC12 and the PCB concentration results for one of the soil samples was above 50 ppm.
15. The soil was stockpiled in aggregate and stored on the floor of AOC12.
16. The excavation, piling and storing of PCB contaminated soil in AOC12, resulted in the production of bulk PCB remediation waste that is regulated for disposal under 40 C.F.R. Part 761 subpart D.
17. The combined pile of PCB contaminated soil stored in AOC12 described in paragraphs 15-16 (hereinafter “the PCB Soil Pile”) was bulk PCB remediation waste as that term is defined at 40 C.F.R. § 761.3.
18. On April 11, 2013 and May 10, 2013, the soil excavation was expanded further north and east-southeast of AOC12.
19. The soil resulting from the April 11, 2013 and May 10, 2013 excavations was added to the PCB Soil Pile described in paragraphs 15 - 17, above.
20. On September 12, 2013, the bulk PCB remediation waste located in AOC12 was picked up and transported by Carsello & Sons to Pure Soil, LLC – Henry Harris Sanitary Landfill (hereinafter “Henry Harris Landfill”) located at 279 Bridgeton Pike, Mullica Hill, New Jersey.
21. In 2013, 76.75 tons of bulk PCB remediation waste described in paragraphs 15 - 20, above, was shipped, in three shipments, from AOC12 to the Henry Harris Landfill which was not an approved PCB disposal facility pursuant to 40 C.F.R. § 761.75 nor a hazardous waste landfill permitted by EPA under section 3004 of RCRA or by a State authorized under section 3006 of RCRA.
22. Hazardous waste manifests for the PCB remediation waste transported to the Henry Harris landfill, were not prepared. Manifests used for the transport did not identify the waste as containing PCBs; although the application to dispose of the waste at the landfill and the waste classification sampling data noted that, and confirmed that, the waste contained PCBs.
23. Forty C.F.R. § 761.50(b)(3) states PCB remediation waste, including PCB sewage sludge, is regulated for cleanup and disposal in accordance with 40 C.F.R. § 761.61. Forty C.F.R. §

761.61 allows for on-site disposal of PCB remediation waste when conducted under the self-implementing cleanup provisions at 40 C.F.R. § 761.61(a) or, alternatively, at levels and under conditions to be determined when authorized under a risk-based approval issued pursuant to 40 C.F.R. § 761.61(c).

24. Neither Respondent nor P.T.I. notified EPA of an intention to execute a self-implementing on-site cleanup and disposal plan prior to the commencement of the cleanup, as required by 40 C.F.R. § 761.61(a)(3). Nor did either party apply for a risk-based disposal approval, pursuant to 40 C.F.R. § 761.61(c), in order to dispose of PCB remediation waste on-site in a manner other than prescribed in 40 C.F.R. § 761.61(a).
25. In 2015, some of the PCB remediation waste was left onsite in AOC12 and, according to the recorded 2015 Deed Notice, a 4- to 6-inch thick monolithic concrete floor was laid over it as a cap.
26. On November 9, 2015, a deed notice for the Facility was filed with the Bergen County Clerk's office. The deed notice included restrictions on the use of certain parts of the Facility including maintenance of engineering controls put in place in AOC12, including a cap consisting of a 4 to 6-inch thick monolithic concrete floor covering the PCB remediation waste (PCB contaminated soil with a PCB concentration of less than 10 ppm) disposed on-site; and a provision making all future holders of the Facility subject to the use restrictions contained in the deed.
27. After the cap was installed and the deed notice was filed, Respondent submitted a Remedial Investigation Report/Remedial Action Report/Remedial Action Workplan (Workplan") to EPA.
28. The PCB-related activities described in the Workplan had been conducted prior to the date of the Workplan by both EcolSciences and Respondent.
29. EPA rejected the Workplan.
30. At all times relevant to this administrative proceeding, Respondent was a "generator" of "PCB waste" as those terms are defined at 40 C.F.R. § 761.3.
31. Respondent's activities at the Facility are subject to the regulations and requirements pertaining to the disposal of 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.
32. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.
33. At all times relevant to this administrative proceeding, Respondent managed on behalf of PTI, the PCB waste sampling, handling, removal, and disposal decisions for the Facility with regard to AOC 12.

34. Respondent's failure to notify EPA of a self-implementing cleanup or to apply to EPA for a risk-based disposal approval prior to engaging in its PCB cleanup activities at the Facility, as alleged in paragraph 27 & 28, above, constitutes a failure or refusal to comply with 40 C.F.R. § 761.61, which is a violation of § 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), for which a penalty may be assessed.
35. The PCB Soil Pile transported from the Facility to Henry Harris Landfill for off-site disposal, as described in paragraphs 15 - 21, above, is "PCB waste" as that term is defined at 40 C.F.R. § 761.3.
36. The failure to prepare a hazardous waste manifest on EPA Form 8700-22, as described in paragraph 22, constitutes a failure to comply with 40 C.F.R. § 761.207, which is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
37. The disposal of 76.75 tons of bulk PCB Remediation waste to a landfill that is not an approved PCB disposal facility under 40 C.F.R. § 761.75 as described in paragraph 2, above, was an improper off-site disposal of PCBs.
38. The failure to cover the on-site PCB remediation waste with a cap having a minimum thickness of 15 cm (6 inches) as required by 40 CFR § 761.61(a)(7), as described in paragraph 25, above, without having prior EPA approval of such disposal is an improper on-site disposal of PCBs.
39. The off-site and on-site disposal of bulk PCB remediation waste constitute failures to comply with 40 C.F.R. §§ 761.1, 761.50, and 761.61, which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
40. On or about April 25, 2019, Respondent submitted to EPA on behalf of PTI, a Self-Implementing Cleanup and Disposal Plan for the Facility, which EPA approved on July 21, 2020.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; and (b) neither admits nor denies "EPA's Findings of Fact and Conclusions of Law" as set forth in this document.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date"). It is further

hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **Fifty-Three Thousand Six Hundred Fifty Dollars (\$53,650.00)**. The civil penalty shall be paid in two installments within six months of the effective date of the Consent Agreement in the manner described in paragraphs 2 and 3 of the Consent Agreement, below.
2. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum for calendar year 2021. With applicable interest at the rate of one percent (1%) per annum on the outstanding principal balance, Respondent shall make *total payments plus interest* to equal **Fifty-Three Thousand Seven Hundred Sixty Dollars and Twenty-Four cents (\$53,760.24)**, as follows:
 - a. The first installment of **Twenty-Six Thousand Eight Hundred Twenty-Five Dollars (\$26,825.00)**, consisting of a principal payment of \$26,825.00 and an interest payment of \$0.00 must be paid on or before 30 days from the effective date; and
 - b. The second installment of **Twenty-Six Thousand Nine Hundred Thirty-Five Dollars and Twenty-Four Cents (\$26,935.24)**, consisting of a principal payment of \$26,825.00 and an interest payment of \$110.24, must be paid on or before 180 calendar days from the effective date.
3. The payments, in accordance with the terms and schedule of this Consent Agreement, shall be made by cashier's check, certified check, electronically via Fedwire or on-line. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payments by cashier's check or certified check, then each such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payments electronically, then each such Fedwire or on-line payment shall be *received* on or before the date specified.
 - a. If Respondent chooses to make payments by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America**" and shall be identified with a notation thereon listing the following: *In the Matter of Eikon Planning & Design, LLC, TSCA-02-2021-9105*. If payments are made by either form of check, such payment shall be mailed to the following address:

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

- b. If Respondent chooses to make payments by Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:
 - i. Amount of Payment;
 - ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
 - iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
 - iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
 - v. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
 - vi. Name of Respondent: **In the Matter of Eikon Planning & Design, LLC;** and
 - vii. Case docket number: **TSCA-02-2021-9105.**
 - c. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to yu.jeannie@epa.gov and wise.milton@epa.gov with *In the Matter of Eikon Planning & Design, LLC, TSCA-02-2021-9105* as the subject line.
4. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.
 5. If Respondent fails to make timely payment of any one of the required installments in accordance with the schedule set forth in paragraph 2 of this Consent Agreement, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the following handling charges and late penalty charges in the event of any such failure or default and shall remit such payment in accordance with the payment instructions in paragraph 3 of this Consent Agreement, above.

- a. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - b. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
6. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
 7. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.
 8. Respondent certifies that it has requested of EPA that payment of the \$53,650.00 civil penalty be in installments because of the financial condition of Respondent, *viz.* a onetime payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.
 9. Except as the parties may agree otherwise in writing, all responses, documentation, information and communication submitted in connection with this Consent Agreement shall be sent by email to:

Ann Finnegan
TSCA Enforcement Coordinator
Pesticides & Toxic Substances Compliance Branch
Finnegan.Ann@epa.gov

and

Jeannie M. Yu, Esquire
Assistant Regional Counsel
Office of Regional Counsel
Yu.Jeannie@epa.gov

Unless the above-named EPA contacts are later advised otherwise by writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) by email to the Respondent at the following address:

Albert I. Telsey
Attorney at Law
Meyner and Landis LLP
One Gateway Center
Suite 2500
Newark, New Jersey 07102
Atelsey@Meyner.com

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above.
11. Nothing in this document is intended nor shall be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.
12. Respondent agrees that all terms of settlement are set forth herein. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalties) the civil and administrative claims described in paragraphs 34 -39 set forth in the EPA's Findings of Fact and Conclusions of Law, above.
13. Respondent hereby waives any right it may have to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on EPA's Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.
14. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought by the United States, including EPA: a) to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order.
15. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.
16. This Consent Agreement and Final Order 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.

17. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
18. Each party hereto agrees to bear its own costs and fees in this matter.
19. Complainant shall email to Respondent (to the representative designated in paragraph 9 of this Consent Agreement) a copy of the fully executed CAFO. Respondent consents to service of the CAFO by email and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.

In the Matter of Eikon Planning & Design, LLC,
Docket No. TSCA-02-2021-9105

Eikon Planning & Design, LLC

RESPONDENT:

BY:  _____

NAME: Glenn P. Brukardt
(PLEASE PRINT)

TITLE: Managing Member

DATE: 3/12/2021

In the Matter of Eikon Planning & Design, LLC,
Docket No. TSCA-02-2021-9105

COMPLAINANT:

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

DATE: _____

In the Matter of Eikon Planning & Design, LLC,
Docket No. TSCA-02-2021-9105

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

Walter E. Mugdan
Acting Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

In the Matter of Eikon Planning & Design, LLC,
Docket No. TSCA-02-2021-9105

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing docket number TSCA-02-2021-9105, in the following manner to the respective addressees listed below:

By email to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by email:

Albert I. Telsey
Attorney at Law
Meyner and Landis LLP
One Gateway Center Suite
2500
Newark, New Jersey 07102
Atelsey@Meyner.com

Dated: _____, 2021
New York, NY
