

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Original

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In the Matter of :
:
Cycle Chem, Incorporated, :
:
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2017- 9102

REGIONAL MANAGER
CLEER
2017 FEB -7 PM 2:56
U.S. Environmental
Protection Agency, Region 2

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 order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), alleges that Cycle Chem, Incorporated ("Cycle Chem" or "Respondent") violated 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).

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("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 Cycle Chem, Incorporated.
2. Respondent owns the facility located in and around 201 South First Street, Elizabeth, New Jersey (hereinafter "Respondent's facility").
3. By letter dated July 27, 2016, Respondent voluntarily disclosed to EPA that, on July 22, 2016, Respondent shipped PCB remediation waste from Respondent's facility for off-site disposal without identifying it as PCB on EPA Manifest Form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. §761.207(a).
4. In the letter described in paragraph 3, above, Respondent also disclosed that the PCB remediation waste shipped from Respondent's facility was subsequently disposed in a manner not authorized under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii).
5. On November 8 and 16, 2016 the parties met for informal settlement conferences via telephone.

CONCLUSIONS OF LAW

1. Respondent 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. Disposal of PCB remediation waste in a manner not authorized under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii) is a violation of 40 C.F.R. § 761.60(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. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) for the violations described in paragraphs 3 and 4, above.

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.

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 agrees to pay, by cashier's or certified check, a civil penalty in the amount of **FIFTY SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$56,250.00)**,

payable in equal two installments of **TWENTY EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$28,125.00)** each, to the "Treasurer of the United States of America". The checks shall each 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 checks shall be mailed to:

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

Alternatively, payments may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. For each payment, 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 of the first installment must be received at the above address (or account of EPA) on or before **45 calendar days** after the effective date. The effective date of this Order shall be the date of the signature of the Final Order at the end of this document. Payment of the second installment must be received at the above address within six (6) months of the date of the first payment (the date by which payment must be received shall hereinafter be referred to as the "due date"). If Respondent fails to pay any of the above payments by its due date, Respondent shall pay an additional stipulated penalty of One Thousand Dollars (\$1,000) for each such failure unless, prior to the due date, Respondent has demonstrated good cause for a modification of the

schedule and Complainant has agreed in writing to a modified payment schedule. Promptly after each payment has been made, Respondent shall send copies of each payment or furnish reasonable proof that each such payment has been made to both:

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

and

Ann Finnegan, Life Scientist
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 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. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 761, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. 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 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, the Deputy Regional Administrator, or the Regional Judicial Officer 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.

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.

9. The 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. Each party shall bear its own costs and attorney fees in this matter.

11. 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: Terry Ernest
Cycle Chem, Incorporated

NAME: Terry Ernest
(PLEASE PRINT)

TITLE: V.P. Treatment & Disposal Serv.

DATE: 11/20/17

COMPLAINANT:

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

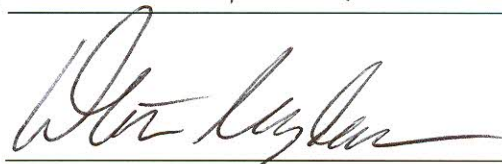
DATE: 11/31/17

In the Matter of Cycle Chem, Incorporated
Docket Number TSCA-02-2017-9102

FINAL ORDER

The Acting 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 Cycle Chem, Incorporated bearing Docket Number TSCA-02-2017-9102. 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 into 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: FEB. 1, 2017



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

In the Matter of Cycle Chem, Incorporated
Docket Number TSCA-02-2017-9102

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of February 2017, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2017-9102, by certified mail, return receipt requested, to:

Terry Earnest, Branch Manager
Cycle Chem, Incorporated
201 South First Street
Elizabeth, NJ 07206

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.

