

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

Received by  
EPA Region 1  
Hearing Clerk

In the Matter of:  
  
M.J. Cataldo, Inc.  
  
Respondent  
  
Proceeding under Section 16(a) of the Toxic  
Substances Control Act, 15 U.S.C. § 2615(a)

Docket No. TSCA-01-2023-0032

**CONSENT AGREEMENT AND  
FINAL ORDER**

**CONSENT AGREEMENT**

The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that M.J. Cataldo, Inc. (“Respondent”) violated Section 15 the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2614, and EPA’s regulations promulgated at 40 C.F.R. Part 761 pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), the Parties agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before a hearing, and without adjudication of any issue of fact or law, the parties agree to comply with the terms of this CAFO as follows:

## I. STATUTORY AND REGULATORY AUTHORITY

1. Congress authorized EPA to promulgate regulations under TSCA regarding polychlorinated biphenyls (“PCBs”). 15 U.S.C. § 2605(e) (TSCA § 6(e)).
2. EPA promulgated PCB regulations at 40 C.F.R. Part 761.
3. It is unlawful to fail or refuse to comply with any requirement of 40 C.F.R. Part 761. *See* 15 U.S.C. § 2614(1) (TSCA § 15(1)). Any person who violates the same shall be liable to the United States for a civil penalty. *See* 15 U.S.C. § 2615(a) (TSCA § 16(a)).
4. Forty C.F.R. Part 761, Subpart B regulates the manufacturing, processing, distribution, and use of PCBs and PCB items.
5. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 87 Fed. Reg. 1676 (January 6, 2023)), together authorize the assessment of civil penalties of up to \$46,989 for each violation of section 15 of TSCA that occurs after November 2, 2015 but for which penalties were assessed on or after January 6, 2023. Pursuant to section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), each day that a violation of section 15 of TSCA continues constitutes a separate violation.

## II. GENERAL ALLEGATIONS

6. In or around November 2020, Respondent demolished a building at 257 King Street in Littleton, MA (“the building”).
7. The building – and thus the demolition waste – contained concrete which was coated with paint containing PCBs at concentrations exceeding 50 parts per million (“ppm”).

8. Paints and coatings are substances regulated by 40 C.F.R. Part 761. 40 C.F.R. § 761.1(b)(1).

9. In or around November 2020, Respondent delivered the demolition waste to another company and paid that company to accept it as recyclable concrete.

10. Respondent “distributed in commerce” PCBs within the meaning of that term set forth in 40 C.F.R. § 761.3.

11. Respondent is a corporation and thus a “person” as defined by 40 C.F.R. § 761.3.

12. 40 C.F.R. Part 761 applies to all persons who, *inter alia*, distribute in commerce PCBs. 40 C.F.R. § 761.1(b)(1).

13. The requirements of 40 C.F.R. Part 761 apply to Respondent. 40 C.F.R. § 761.1(b)(1).

### **III. ALLEGED VIOLATION OF 40 C.F.R. § 761.20(C)**

14. Respondent paid another company to accept its demolition waste, including approximately 32.1 tons of PCB bulk product waste, part of which contained dried paint containing PCBs.

15. Respondent understands that this other company recycled the waste for resale.

16. Respondent distributed in commerce PCBs for use within the United States.

17. Respondent did so without an exemption granted pursuant to section 6(e)(3)(B) of TSCA.

18. The PCBs Respondent distributed in commerce did not result from an excluded manufacturing process as defined in 40 C.F.R. § 761.3, were not recycled PCBs as defined in 40 C.F.R. § 761.3, and were not excluded PCBs as defined in 40 C.F.R. § 761.3.

19. Respondent's activities do not meet any of the conditions specified in 40 C.F.R. § 761.20(c)(1) through (5).

20. Respondent's distribution in commerce of PCBs violated 40 C.F.R. § 761.20(c) and 15 U.S.C. § 2605(e)(3)(A)(ii) (TSCA § 6(e)(3)(A)(ii)).

#### **IV. TERMS OF SETTLEMENT**

21. Respondent certifies that it will comply with all requirements of TSCA and its implementing regulations moving forward.

22. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it may have as to jurisdiction and venue.

23. Respondent waives the right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives the right to appeal the Final Order.

24. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein. The provisions of this CAFO shall be binding on Respondent and Respondent's officers, directors, agents, employees, successors, and assignees.

25. Taking into account the nature, circumstances, extent, and gravity of the violation and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, Complainant has determined that it is fair and proper that Respondent pays a total civil

penalty amount of \$12,500 (“civil penalty”) to resolve the violation alleged in Section III of this CAFO.

26. Respondent agrees to:

- a. Pay the civil penalty within 30 calendar days of the Effective Date of this agreement (which is the day it is filed with the Regional Hearing Clerk);  
and
- b. Pay the civil penalty using any method, or combination of methods, provided on the website, <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, identifying each and every payment with “In re M.J. Cataldo, Inc., Docket No. TSCA-01-2023-0032”; and
- c. Within 24 hours of payment of the civil penalty, send proof of payment to the addresses below (“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “In re M.J. Cataldo, Inc. Docket No. TSCA-01-2023-0032”).

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27. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondent does not fully pay the civil penalty required by Paragraph 25 of this CAFO when due, the unpaid penalty shall be payable with accrued interest from the original due date to the time of payment, with interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the cost of debt collection, including possessing and handling costs and attorney's fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after the payment is due, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

28. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. §

1.16221, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

29. This CAFO constitutes a settlement by EPA of all claims for civil penalties for the violation specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions for any other alleged violation subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

30. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

31. Each of the undersigned representatives of the Parties certifies that they are fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

32. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following email address: [jcataldo@mjcataldo.com](mailto:jcataldo@mjcataldo.com). Respondent understands that this e-mail address may be made

public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

33. Each Party shall bear its own costs and attorney's fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

34. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

35. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.



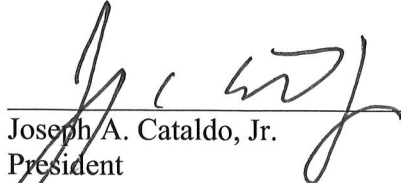
**FOR COMPLAINANT:**


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James Chow, Acting Director  
Enforcement and Compliance Assurance Division  
EPA Region 1

*Dated by e-signature*

**FOR RESPONDENT M.J. CATALDO:**

  
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Joseph A. Cataldo, Jr.  
President  
M.J. Cataldo, Inc.

  
\_\_\_\_\_  
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

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**CONSENT AGREEMENT AND  
FINAL ORDER**

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

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LeAnn Jensen  
Regional Judicial Officer  
EPA Region 1

*Dated by e-signature*