

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	U.S. EPA Docket No. TSCA-03-2018-0053
	:	
American University	:	
3501 Nebraska Ave, NW	:	
Myers Terrace Level	:	
Washington, DC 20016	:	Proceeding under Sections 15 and 16 of
	:	the Toxic Substances Control Act,
Respondent.	:	15 U.S.C. §§ 2614 and 2615
	:	
3501 Nebraska Ave, NW	:	
Washington, DC 20016	:	
	:	
	:	
Facility.	:	

U.S. EPA-REGION 3-RHC
FILED-19APR2018pm2:17

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by: the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”); and American University (“Respondent”) pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 15 and 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2614 and 2615, and 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 (“Consolidated Rules of Practice”), with specific reference to 40 C.F.R §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) resolve violations of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled “Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions” (hereinafter, the “PCB Regulations”).
2. The violations cited herein pertain to the alleged failure of the Respondent to comply with PCB Regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and the requirements for, the manufacture, processing, distribution in commerce, use and disposal of polychlorinated biphenyls (“PCBs”) and PCB Items at a facility located at 3501 Nebraska Ave, NW, Washington, DC 20016 (the

“Facility”). The regulations cited herein are the PCB Regulations, as revised on July 1, 2014.

II. GENERAL PROVISIONS

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
4. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CAFO.
5. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
8. Respondent shall bear its own costs and attorney’s fees.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the findings of fact and conclusions of law set forth immediately below.
10. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605.
11. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605.
12. Respondent is a private research university chartered by an Act of Congress on February 24, 1893 and a non-profit corporation registered in the District of Columbia located at 3501 Nebraska Ave, NW, Washington, DC 20016 and is a “person” as defined in 40 C.F.R. § 761.3.
13. Respondent is and, at all times relevant to violations alleged in this Consent Agreement, was the operator and owner of the Facility.
14. On May 25, 2017, Cycle Chem, Inc. (“CCI”), a treatment, storage, and disposal facility for hazardous and non-hazardous waste, accepted 55 gallons of mixed media RCRA

debris with solvents and oil from AU. CCI determined via waste analysis, that the drum from AU contained TSCA regulated PCBs.

15. On June 2, 2017, the waste analysis revealed that the drum contents showed a positive result of 4,071 ppm of PCB Aroclor 1254.
16. On June 5, 2017, CCI submitted to EPA an Unmanifested Waste Report per 40 C.F.R. § 761.211.
17. On the basis of information provided by the Respondent and from other persons during the course of an investigation, Complainant has determined that the Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and applicable PCB Regulations, during the course of commercial activities performed and conducted by Respondent, or under its direction and control while operating the Facility.

COUNT I

(Failure to Properly Manifest PCB Waste for Shipment

40 C.F.R. § 761.207)

18. The allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
19. 40 C.F.R. § 761.207 provides, in pertinent part, that a generator who transports, or offers for transport PCB waste for commercial off-site storage or off-site disposal, must prepare a manifest on EPA Form 8700-22.
20. The term “PCB” is defined to mean “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance,” 40 C.F.R. § 761.3.
21. On May 25, 2017, CCI, a treatment, storage, and disposal facility for hazardous and non-hazardous waste, accepted 55 gallons of mixed media RCRA debris with solvents and oil from AU. The shipment did not include a EPA Form 8700-22. CCI determined via waste analysis, that the drum from AU contained TSCA regulated PCBs.
22. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.207 on May 25, 2017 by offering for transport PCB waste for commercial off-site storage or off-site disposal without preparing and provided a manifest on EPA Form 8700-22.

IV. CIVIL PENALTY

23. In satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of Six Thousand Three Hundred and Seventy-Five Dollars (\$6,375.00), in accordance with the provisions set forth below. The civil penalty shall become due and payable immediately

upon the Respondent's receipt of true and correct copies of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, the Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to the Respondents.

24. The aforesaid settlement amount is consistent with the provisions and objectives of TSCA and 40 C.F.R. Part 761. Complainant has determined the appropriate penalty for the violations identified and described in this Consent Agreement based upon consideration of a number of factors, including the applicable penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent, and gravity of the violations and, with respect to the violators, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Polychlorinated Biphenyls Penalty Policy* (April 9, 1990). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.
25. Payment of the Six Thousand Three Hundred and Seventy-Five Dollars (\$6,375.00) civil penalty amount shall be made by either cashier's check, certified check, or electronic wire transfer in the following manner:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2018-0053;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Customer Service Contact: (513) 487-2091
 - d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1818

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- 26. Respondent may also pay the civil penalty electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

27. A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Jeffrey S. Nast, Esq.
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Bevin Esposito
Acting Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

28. 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 and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, any Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
29. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).
30. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
31. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

32. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. EFFECT OF SETTLEMENT

33. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against the Respondents under TSCA Section 6(e), 15 U.S.C. § 2605(e), for the specific violations alleged in Section III (“EPA Findings of Fact and Conclusions of Law”) above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VI. OTHER APPLICABLE LAWS

34. Nothing in this CAFO shall relieve the Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

VII. CERTIFICATION OF COMPLIANCE

35. Respondent certifies to Complainant, by its signature hereto, to the best of Respondent’s knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and of 40 C.F.R. Part 761, for which violations are alleged in this Consent Agreement.

VIII. RESERVATION OF RIGHTS

36. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged in Section III (“EPA Findings of Fact and Conclusions of Law”) against the Respondent. EPA reserves the right to commence action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

IX. NO RELEASES

37. Nothing in this CAFO shall constitute or be construed as a release of any of the Respondent from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CAFO for any liability relating in any way to the presence of PCBs at the Facility.

X. NO REIMBURSEMENTS

38. Respondent certifies that they have not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses that it incurs to fulfill the terms of this CAFO.

XI. PARTIES BOUND

39. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, and Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

40. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the Final Order is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

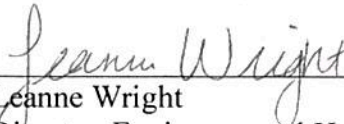
41. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

42. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind such Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.


For Respondent, American University:

Date: 2/27/18

By: 
Leanne Wright
Director, Environmental Health & Safety
American University

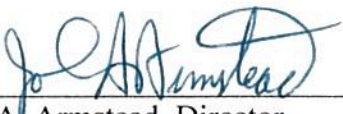
For Complainant:

Date: 3/13/18

By: 
Jeffrey S. Nast
Sr. Asst. Regional Counsel
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 4.12.18

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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3501 Nebraska Ave, NW :
Myers Terrace Level :
Washington, DC 20016 : **Proceeding under Sections 15 and 16 of**
: **the Toxic Substances Control Act,**
Respondent. : **15 U.S.C. §§ 2614 and 2615**
:
3501 Nebraska Ave, NW :
Washington, DC 20016, :
:
Facility. :
:

FINAL ORDER


U.S. EPA-REGION 3-RHC
FILED-19APR2018PM2:18

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and American University ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, and upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and the Consolidated Rules of Practice, Respondent American University is hereby ordered to pay a total civil penalty of **Six Thousand Three Hundred and Seventy-Five Dollars (\$6,375.00)**, as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: April 18, 2018



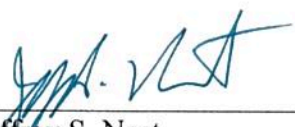
Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, In Re: American University. TSCA-03-2018-0053, to the person and address listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Leanne Wright, Director
Environmental Health & Safety
American University
3501 Nebraska Ave, NW
Myers Terrace Level
Washington, DC 20016**

Dated: 4/19/18



Jeffrey S. Nast
Sr. Assistant Regional Counsel
Office of Regional Counsel
EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029