

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

In the Matter of:	:	
	:	
Cycle Chem, Inc.	:	U.S. EPA Docket No. TSCA-03-2009-0209
201 S 1st Street	:	
Elizabeth, New Jersey 07206	:	
	:	
Respondent.	:	
	:	
Cycle Chem, Inc.	:	Proceeding under Sections 15 and 16
550 Industrial Drive	:	of the Toxic Substances Control Act,
Lewisberry, Pennsylvania 17339	:	15 U.S.C. §§ 2614 and 2615
	:	
Facility.	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. On June 29, 2009, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III (“Complainant”) issued an Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) against Cycle Chem, Inc. (“Respondent”) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Sections 15 and 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2614 and 2615, the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, 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 (hereinafter the “*Consolidated Rules of Practice*”) for violations of requirements set forth at 40 C.F.R. Part 761, Subparts D, J and K.
2. Pursuant to a June 30, 2010 Order of the Presiding Officer and a September 16, 2010 filing by the Parties, the Complaint was altered by stipulation to withdraw portions of Count I (hereinafter the “Altered Complaint”).
3. The Altered Complaint was further modified on October 14, 2010 by Complainant’s filing of a “Notice of Withdrawal, with Prejudice, of Count I of the Complaint as Altered by Stipulation,” through which Complainant withdrew Count I of the Altered Complaint, with prejudice (hereinafter the “Modified Altered Complaint”).

4. This Consent Agreement (or "CA") is entered into by the Director of the Land and Chemicals Division, EPA Region III and Respondent 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, disposal, storage and marking of polychlorinated biphenyls ("PCBs") and PCB Items to address violations of TSCA § 6(e) at Respondent's facility located at 550 Industrial Drive, Lewisberry, Pennsylvania 17339 (the "Facility").

II. GENERAL PROVISIONS AND STIPULATIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Modified Altered Complaint.
6. Except as provided in Paragraph 5, above, the Respondent neither admits nor denies the specific factual allegations that are contained in the Modified Altered Complaint and in this CA.
7. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order (collectively, "CAFO"), or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest the allegations set forth in the Modified Altered Complaint and in this CA and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each party to this CA shall bear its own costs and attorney's fees in connection with this proceeding.

III. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

11. Subject to Paragraph 6, above, this CA incorporates by reference, as if fully set forth herein, the factual allegations and conclusions of law contained in the Modified Altered Complaint.

IV. CIVIL PENALTY

12. Respondent agrees to pay a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00), 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 the Modified Altered Complaint.

13. The Parties represent that the settlement terms are reasonable and are based upon Complainant's consideration of a number of factors, including the 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 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's April 9, 1990 *Polychlorinated Biphenyls (PCB) Penalty Policy* ("PCB Penalty Policy"). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner, entitled *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for TSCA Section 16(a)(2)(B) violations occurring after January 30, 1997 and prior to March 15, 2004 were increased by 10% (not to exceed a \$27,500.00 per violation statutory maximum penalty) to account for inflation. Penalties for TSCA Section 16(a)(2)(B) violations occurring after March 15, 2004 and before January 13, 2009 were increased by an additional 17.23% (not to exceed a \$32,500.00 per violation statutory maximum penalty) to account for subsequent inflation.
14. Payment of the civil penalty as required by paragraph 12, above, 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 (*Docket No. TSCA-03-2009-0209*).
 - b. All checks shall be made payable to "**United States Treasury**".
 - c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen - (513-487-2091)
Eric Volck - (513-487-2105)

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: (314)418-1028

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

- f. 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 No.: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact : John Schmid - (202) 874-7026, or REX, 1-866-234-5681

- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

h. On-Line Payment Option:

WWW.PAY.GOV

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

15. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

16. 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, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
17. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to 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 rate in accordance with 40 C.F.R. § 13.11(a).
18. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.

19. A late payment 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).
20. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

21. Respondent certifies to Complainant by its signature hereto that, to the best of Respondent's knowledge and belief, Respondent currently is in compliance at the Facility with all relevant provisions of TSCA and its implementing regulations for which violations are alleged in the Modified Altered Complaint.

VI. OTHER APPLICABLE LAWS

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

VII. RESERVATION OF RIGHTS

23. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations of TSCA alleged in the Modified Altered Complaint. EPA reserves the right to commence action against any person, including 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 40 C.F.R. § 22.18(c) of the Consolidated Rules of Practice. 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.

VIII. FULL AND FINAL SATISFACTION

24. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged against Respondent in the Modified Altered Complaint. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

IX. PARTIES BOUND

25. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

X. EFFECTIVE DATE

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

XI. ENTIRE AGREEMENT


27. 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 in the Modified Altered Complaint and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XII. EXECUTION

28. 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 Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent, Cycle Chem, Inc.:

Date: 10/25/10


By: 
Michael Persico
President
Cycle Chem, Inc.

In the Matter of:
Cycle Chem, Inc.

Consent Agreement
Docket No. TSCA-03-2009-0209

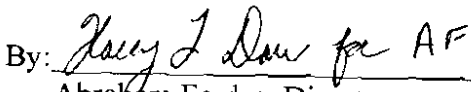
For Complainant:

Date: 11/2/2010

By: 
A.J. D'Angelo
Senior Assistant Regional Counsel

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

Date: 11/8/2010

By: 
Abraham Ferdas, Director
Waste and Chemicals Management Division

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Cycle Chem, Inc.	:	Proceeding under Sections 15 and 16
550 Industrial Drive	:	of the Toxic Substances Control Act,
Lewisberry, Pennsylvania 17339	:	15 U.S.C. §§ 2614 and 2615
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency ("EPA"), Region III, and Respondent, Cycle Chem, Inc., have executed a document entitled "Consent Agreement", which I 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*"), published at 40 C.F.R. Part 22, with specific reference to Section 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

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 by the Parties 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), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Fifty Thousand Dollars (\$50,000.00) in the manner set forth in the Consent Agreement.

In the Matter of:
Cycle Chem, Inc.

Final Order
Docket No. TSCA-03-2009-0209

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III or by his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date:

11/18/10

By:



Renée Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

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ENVIRONMENTAL PROTECTION AGENCY
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550 Industrial Drive	:	of the Toxic Substances Control Act,
Lewisberry, Pennsylvania 17339	:	15 U.S.C. §§ 2614 and 2615
	:	
Facility.	:	

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be *hand-delivered* to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, the original and one copy of the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order in the above-captioned matter.


I further certify that on the date set forth below, I caused true and correct copies of the aforementioned documents to be mailed, in the manner indicated below, to each of the following persons at the following addresses:

Hon. Barbara A. Gunning
U. S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th Street, N.W.
Washington, DC 20005
*(Via First Class Mail,
Postage Prepaid)*

Mr. James M. Hazen, Esquire
One River Centre
331 Newman Springs Road
Building 1, 4th Floor, Suite 143
Red Bank, New Jersey 07701
*(Via Certified Mail, Return Receipt
Requested, Postage Prepaid - Article No.
7004 2890 0000 5075 7125)*

NOV 18 2010

Date


A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480
Fax (215) 814-2603