

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

U.S. EPA Docket No. TSCA-03-2016-0105

Nemacolin Country Club
PO Box 134
Beallsville, PA 15313

Respondent.

Proceeding under Sections 15 and 16 of
the Toxic Substances Control Act,
15 U.S.C. §§ 2614 and 2615

3100 National Pike West
Beallsville, PA 15313

Facility.

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 Nemacolin Country Club ("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(c) 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 3100 National Pike West, Beallsville, Pennsylvania

15313 (the "Beallsville 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. Each Party 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 Pennsylvania non-profit corporation located at 3100 National Pike West, Beallsville, Pennsylvania 15313 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 Beallsville Facility.
14. On May 6, 2015, Safety-Kleen Systems, Inc. ("Safety-Kleen"), a used oil recycler, had its Truck No. 507003 collect 100 gallons of used oil, in two 55-gallon drums, from Respondent's Beallsville Facility. The used oil collected from Respondent's Beallsville Facility was transported to Safety-Kleen's Wheeling, West Virginia facility and

- combined in a large storage tank ("Tank 8"), which contained nearly 19,000 gallons of waste oil collected from other customers.
15. On May 11, 2015, a bulk sample from Tank 8 at Safety-Kleen's Wheeling, West Virginia facility tested positive for PCBs at 11.1 ppm. Truck retain samples from the May 6, 2015 pickup at Respondent's Facility were subsequently submitted for testing.
 16. On May 15, 2015, the truck retain sample results revealed that the May 6, 2015 sample from Truck No. 507003 showed a positive result of 12 ppm PCB, specifically PCB Aroclor 1260 (hereinafter, PCB-1260). All of Safety-Kleen's individual customers' retain samples from the May 6, 2015 Truck No. 507003 were then sent for testing.
 17. On May 19, 2015, the results of the customer retain samples indicated that the source of PCB contamination found in the Truck No. 507003 used oil samples was the used oil collected from Respondent's Beallsville Facility, whose initial retain sample tested positive at 1400 ppm PCB-1060. Between May 22 and May 26, 2015, Safety-Kleen returned to Respondent's Beallsville Facility to perform confirmatory sampling of the residual material in the two drums that had been emptied into Safety-Kleen's collection truck No. 507003.
 18. On May 29, 2015, the tests of the residual samples showed a positive result for PCBs at 1400 ppm PCB-1260, for the residual sample of used oil collected at Respondent's Beallsville Facility on May 15, 2015 by Safety-Kleen's personnel. Safety-Kleen submitted an Unmanifested Waste Report, per 40 C.F.R. § 761.211, to EPA that same day.
 19. On the basis of information collected from the Respondent and from other persons during the course of an investigation, Complainant has determined that the Respondent has violated TSCA Sections 6(c) and 15, 15 U.S.C. §§ 2605(c) 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

*(Distribution in Commerce of PCB
Contaminated Oil)*

20. The allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
21. 40 C.F.R. § 761.20(c) provides, in pertinent part, that no person may process or distribute in commerce any PCB, or any PCB item regardless of concentration, for use within the United States without an exemption.
22. 40 C.F.R. § 761.3 defines the term "PCB" 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."

23. "Distribution in commerce" is defined to mean "to sell, or the sale of, [a PCB] substance mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of, the substance, mixture, or article after its introduction into commerce."
24. Pursuant to 40 C.F.R. § 761.20(c)(4), the general PCB distribution in commerce prohibition does not generally apply to PCBs or PCB items with concentrations of less than 50 ppm that are distributed in commerce for purposes of disposal. However, 40 C.F.R. § 761.1(b)(5) prohibits the use of dilution to avoid the requirements of any regulation specifying a PCB concentration threshold.
25. 40 C.F.R. § 761.20(e)(2)(ii) also specifically provides that, "if any PCBs at a concentration of 50 ppm or greater have been added to [a] container or equipment [e.g. a tank], then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the disposal requirements of this part."
26. On May 6, 2015, Safety-Kleen personnel collected from Respondent's Beallsville Facility and transported to Safety-Kleen's Wheeling Facility PCB contaminated used oil with an original source concentration of greater than 50 ppm PCBs, as determined in the manner set forth in Paragraphs 17 and 18, above.
27. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.20(c) on May 6, 2015 by and through Respondent's distribution in commerce of PCB-used oil with an original source concentration of greater than 50 ppm PCBs without obtaining an exemption from the PCB distribution in commerce prohibition.

IV. CIVIL PENALTY

28. 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 Two Thousand Six Hundred and Seventy-five Dollars (\$2,675.00), 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.
29. 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)*.

30. Payment of the Two Thousand Six Hundred and Seventy-Five Dollar (\$2,675.00) 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-03-2016-0105;
 - 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

31. 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>
32. 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

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

31. 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.
34. 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).
35. 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.
36. 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(e). 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).
37. 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

38. 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

39. 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

40. 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

41. 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

42. 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

43. 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

44. 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

45. 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

46. 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 CAO.

XIV. EXECUTION

47. 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.

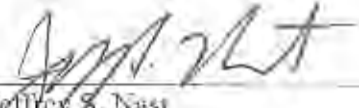
For Respondent Nemacolin Country Club

Date: 4-14-16

By: William Roach, Jr.
William Roach, Jr., President
Nemacolin Country Club


For Complainant:

Date: May 2, 2016

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: 5.9.16

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

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

In the Matter of: : U.S. EPA Docket No. TSCA-03-2016-0105
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Nemacolin Country Club :
PO Box 134 :
Beallsville, PA 15313 :
:
Respondent. : Proceeding under Sections 15 and 16 of
:
3100 National Pike West : the Toxic Substances Control Act,
Beallsville, Pennsylvania 15313, : 15 U.S.C. §§ 2614 and 2615
:
Facility. :


FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Nemacolin Country Club ("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 Nemacolin Country Club is hereby ordered to pay a total civil penalty of **Two Thousand Six Hundred and Seventy-Five Dollars (\$2,675.00)**, 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: May 10, 2016

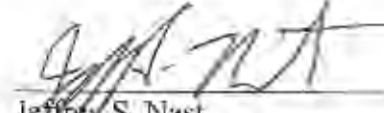

Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

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: Nemaquin Country Club, TSCA-03-2016-0105, 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.

Bradley M. Bassi, Esq.
Bassi, Vreeland & Assoc. P.C.
111 Fallowfield Ave
Charlertoi, PA 15022-1402

Dated: May 10, 2016



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