



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVE.
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 APR 21 AM 11:29
REGIONAL HEARINGS
CLERK

APR 20 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Louis A. Fedele
Vice President, Facilities
Bristol-Myers Squibb Company
Route 206 and Province Line Road
Princeton, NJ 08543

Re: In the Matter of E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company)
Docket No. TSCA-02-2009-9101

Dear Mr. Fedele:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check or other documentation is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Ann Finnegan of my staff at (732) 906-6177, should you have any questions regarding this matter.

Sincerely,

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 APR 21 AM 11: 29
REGIONAL HEARING
CLERK

-----X
In the Matter of :
:
E.R. Squibb & Sons, LLC :
(d/b/a Bristol-Myers Squibb Company) :
Respondent. :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. TSCA-02-2009-9101

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 Respondent E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company) ("Bristol-Myers" or "Respondent") violated Section 6(e) of 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 Bristol-Myers 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 E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company).
2. Respondent owns, operates, and/or controls the facility in and around 1 Squibb Drive, North Brunswick, New Jersey (hereinafter "Respondent's facility").
3. By letter dated May 29, 2008, Respondent voluntarily disclosed to EPA that a violation of the regulations regarding polychlorinated biphenyls (PCBs) may have occurred as a result of activities that were conducted at Respondent's facility (hereinafter "the voluntary disclosure").
4. In accordance with the requirements of EPA's policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 F.R. 19618 (hereinafter "Audit Policy"), the voluntary disclosure was made to EPA within twenty one days of the discovery of the alleged violation.
5. On June 4, 2008, Respondent voluntarily met with representatives from EPA Region 2 to discuss the results of its investigation regarding the alleged violation that was the subject of the voluntary disclosure.
6. Respondent asserts that the alleged violation did not cause or otherwise result in any harm to the health and safety of the public or the environment and that Respondent undertook prompt action to ensure that, in accordance with the requirements of a Certificate of Authority to Operate a Beneficial Use Project for the Use of Crushed Concrete and Expansion Joint Caulk Material ("COA") that was issued to Respondent by the New Jersey Department of Environmental Protection on September 26, 2008, all materials that were the subject of the voluntary disclosure were properly delivered to a former municipal non-hazardous waste landfill that is currently closed.
7. As a result of the voluntary disclosure, EPA determined that Respondent failed to identify PCB waste submitted for off-site disposal on EPA Manifest 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).

8. Complainant sent to Respondent a "Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act ", which alleged that Respondent committed a violation of the PCB regulations at 40 C.F.R. Part 761.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, 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).

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 Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]), 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. Neither the entry into this Consent Agreement nor the payment of the

associated penalty shall constitute an admission of liability by Respondent for any of the violations listed herein.

3. Respondent shall pay a civil penalty in the amount of **EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125)** to the "Treasurer of the United States of America". The check shall 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 check shall be mailed to:

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

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. 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

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Ann M. Finnegan, Life Scientist
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

and

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

The payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the

date by which payment must be received shall hereinafter be referred to as the "due date").

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 any 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 or the Deputy Regional Administrator 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. Each 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 attorneys 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: *[Signature]*
E.R. Squibb & Sons, LLC
(d/b/a Bristol-Myers Squibb Company)

NAME: Louis A. Fedele
(PLEASE PRINT)

TITLE: VP, Facilities

DATE: 3/20/09

COMPLAINANT:

[Signature] P. D'Andrea
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

DATE: March 27, 2009

In the Matter of E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company)
Docket Number TSCA-02-2009-9101

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Complaint bearing Docket No. TSCA-02-2009-9101, issued in the matter of E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company), is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: April 14, 2009

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

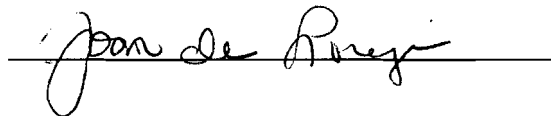
In the Matter of E.R. Squibb & Sons, LLC (d/b/a Bristol-Myers Squibb Company)
Docket Number TSCA-02-2009-9101

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of April, 2009, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2009-9101, by certified mail, return receipt requested, to:

Louis A. Fedele
Vice President, Facilities
Bristol-Myers Squibb Company
Route 206 and Province Line Road
Princeton, NJ 08543

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.

A handwritten signature in cursive script, reading "Jean de Ruyz", is written over a horizontal line.