

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

2009 SEP 16 P 12: 06

In re:

Facility Support Services, LLC  
2685 State Street  
Hamden, CT 06517

Respondent

Proceeding under Section 16(a)  
of the Toxic Substances Control  
Act, 15 U.S.C. § 2615(a).

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

Docket No. TSCA-01-2009-0039

**CONSENT AGREEMENT AND FINAL ORDER**

1. The Complainant, United States Environmental Protection Agency, Region I ("EPA"), alleges that Facility Support Services, LLC ("Respondent" or "FSS") violated Section 15 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2614 and the federal regulations entitled, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614.

2. EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

**I. Preliminary Statement**

3. This is an administrative action for the assessment of monetary penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Section 15(1)(c) states that it shall be unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA. The PCB regulations at 40 C.F.R. Part 761 were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e). They regulate the distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items. EPA alleges that Respondent distributed PCB-contaminated soils in commerce on or about February 14, 2008. Under 40 C.F.R. § 761.20(c), unless an activity falls within one of the three categories of PCBs, PCB Items, or excluded PCB products described in 40 C.F.R. § 761.20(c), or one of the five categories of PCBs, PCB Items, or PCB materials described in 40 C.F.R. § 761.20(c)(1)-(5), no person may distribute in commerce any PCB or any PCB Item, regardless of concentration, for use within the United States or for export from the United States without an exemption. The Respondent's distribution in commerce of PCBs without an exemption on February 14, 2008, constitutes one violation of 40 C.F.R. § 761.20(c) and, therefore, one violation of Section 15 of TSCA, 15 U.S.C. § 2614.

4. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), a party is liable for assessment of a civil administrative penalty of up to \$25,000 per day for the violation described above. Pursuant to inflationary adjustments authorized by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 are subject to up to \$32,500 per day of violation. Violations that occur after January 12, 2009, are subject to up to \$37,500 per day of violation.

5. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO is the most appropriate means of resolving this matter without the expense of protracted and costly litigation.

6. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

## **II. EPA FACTUAL FINDINGS**

7. Respondent is a limited liability company with its principal place of business in Hamden, Connecticut.

8. Respondent is a "person" as defined at 40 C.F.R. § 761.3.

9. Respondent provides environmental consulting services.

10. The facts presented in paragraphs 11 to 23 below are based on representations made by the Respondent in one or more of the following documents: (a) two letters from Respondent to Neighborhood Works/ New Horizons, dated January 24 and April 30, 2008, respectively; (b) PCB Pre-characterization and Closure Notification, dated June 19, 2008; and (c) Respondent's September 16, 2008, response to EPA's July 16, 2008, letter requiring additional information.

11. In 2007, Mutual Housing of South Central Connecticut, Inc., d/b/a Neighborhoodworks New Horizons, ("MHA"), owner of a property located at 85 New Haven Avenue, Milford, CT (the "property"), retained Respondent to conduct sampling and to complete response actions at the property.

12. Specifically, Respondent was hired to conduct a Phase 1 Environmental Site Assessment ("ESA") and Subsurface Investigation ("SI"), due to an earlier release of oil from a underground storage tank ("UST").

13. Based upon the SI, Respondent recommended the re-excavation of the spill area, and MHA contracted with Respondent to oversee the removal and disposal of petroleum impacted soils. Respondent hired a subcontractor to excavate the soils and to provide transportation of the excavated material to Ted Ondrick Construction ("Ted Ondrick") in Chicopee, Massachusetts, for use in asphalt batch treatment and recycling.

14. On February 12, 2008, the excavator inadvertently punctured an abandoned UST and approximately 15-20 gallons of oil were released ("petroleum release"). The oil spilled onto and contaminated soil ("waste-oil contaminated soils").

15. A sample of the waste-oil from the punctured UST was collected and analyzed for PCBs. Respondent also collected 12 grab samples of soil from the excavator bucket during excavation of the waste-oil contaminated soils. The 12 samples were composited into a single sample for PCB analysis.

16. On February 13, 2008, Respondent received a laboratory report stating that the waste oil analytical result was positive for PCBs at a concentration of 280 parts per million ("ppm"). The laboratory report also stated that PCBs were present in the composite soil sample analytical result at a concentration of 0.78 ppm.

17. Based on the analytical results, Respondent determined that the waste-oil contaminated soils could be sent to the Ted Ondrick Construction facility for recycling.

Consequently, on or about February 14, 2008, Respondent shipped approximately 24 cubic yards of the waste-oil contaminated soils for recycling.

18. Respondent did not sample the soils impacted by the petroleum release *in situ*. Under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(i), unless sampled and analyzed for disposal according to the procedures set out in 40 C.F.R. §§ 761.283, 761.286, and 761.292, the bulk PCB remediation waste shall be assumed to contain greater than or equal to 50 ppm PCBs.

19. On April 4, 2008, Respondent forwarded the PCB analytical results to the Connecticut Department of Environmental Protection ("CTDEP") Spill Unit and the PCB Enforcement Unit.

20. On June 19, 2008, in a letter to Kimberly Tisa, EPA's PCB Coordinator, Respondent submitted a Notification of Intent to perform a self-implementing on-site cleanup and disposal of PCB remediation waste ("SIP") under 40 C.F.R. § 761.61(a).

21. On July 19, 2008, EPA sent Respondent a letter seeking further information pertaining to the on-site cleanup and Respondent's sampling methodology.

22. On September 16, 2008, Respondent responded to EPA's request for information with a report containing the requested information.

23. Based upon the documents cited in above paragraphs 19 -22, EPA determined that Respondent failed to properly sample the waste-oil contaminated soils before sending them to the Ted Ondrick facility for recycling and that, accordingly, the waste-oil contaminated soils were bulk PCB remediation waste that should have been sent to an approved PCB disposal facility. See 40 C.F.R. § 761.3 ("PCB remediation waste"); 40 C.F.R. § 761.61(a)(4)(i) ("bulk PCB remediation waste"); and 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(i).

### **III. EPA CONCLUSIONS OF LAW**

24. Under 40 C.F.R. § 761.20(c), unless an activity falls within one of the three categories of PCBs, PCB Items, or excluded PCB products described in 40 C.F.R. § 761.20(c), or one of the five categories of PCBs, PCB Items, or PCB materials described in 40 C.F.R. § 761.20(c)(1)-(5), no person may distribute in commerce any PCB or any PCB Item, regardless of concentration, for use within the United States or for export from the United States without an exemption.

25. The approximately 24 cubic yards of waste-oil contaminated soils that Respondent sent to the Ted Ondrick facility on February 14, 2008, meet the definitions of "PCB remediation waste," as that term is defined in 40 C.F.R. § 761.3, and "bulk PCB remediation waste," as that term is defined in 40 C.F.R. § 761.61(a)(4)(i).

26. The Respondent's shipment of waste-oil contaminated soils to the Ted Ondrick facility, on or about February 14, 2008, for recycling into asphalt was a "distribution in commerce," as that term is defined in 40 C.F.R. § 761.3.

27. The waste-oil contaminated soils that the Respondent sent to the Ted Ondrick facility on or about February 14, 2008, were for "use within the United States."

28. The PCBs that Respondent sent to the Ted Ondrick facility on or about February 14, 2008, do not fall within any of the three categories of PCBs, PCB Items, or PCB products authorized for distribution in commerce without an exemption pursuant to 40 C.F.R. § 761.20(c) because: (a) the PCBs did not result from an "excluded manufacturing process"; (b) the PCBs

were not “recycled PCBs”; and (c) the PCBs were not “excluded PCB products,” as those terms are defined in 40 C.F.R. §761.3.

29. The PCBs that the Respondent distributed in commerce on or about February 14, 2008, for use within the United States, do not fall within any of the five categories of PCBs, PCB Items, or PCB materials authorized for distribution without an exemption pursuant to 40 C.F.R. §761.20(c)(1)-(5) because (a) the PCBs were not sold before July 1, 1979, and distributed in commerce in a totally enclosed manner, see 40 C.F.R. §761.20(c)(1); (b) the PCBs were not distributed in commerce in compliance with the PCB Regulations governing appropriate treatment and disposal of PCBs, see 40 C.F.R. §761.20(c)(2); (c) the PCBs were not exported for disposal in accordance with the PCB export regulations, see 40 C.F.R. §761.20(c)(3); (d) the PCBs were not PCBs at concentrations of less than 50 ppm distributed in commerce for purposes of disposal, see 40 C.F.R. §761.20(c)(4); and (e) the PCBs were not materials contaminated with PCBs because of spills and decontaminated in accordance with applicable EPA standards and regulations, see 40 C.F.R. § 761.20(c)(5). Rather, the waste-oil contaminated soils were “bulk PCB remediation waste” that, absent proper sampling in accordance with 40 C.F.R. §§ 761.283, 761.286, and 761.292, was required to be cleaned up and disposed of as if the soils contained greater than or equal to 50 ppm PCBs. See 40 C.F.R. § 761(a)(5)(i)(B)(2)(i).

30. The distribution of the waste-oil contaminated soils in commerce on or about February 14, 2008, did not fall into one of the authorizations for “non-totally enclosed PCB activities” found at 40 C.F.R. § 761.30.

31. The Respondent did not have an exemption authorizing it to distribute in commerce PCBs or PCB Items for use within the United States on or about February 14, 2008.

32. The Respondent's distribution in commerce of PCBs without an exemption on or about February 14, 2008, constitutes a violation of 40 C.F.R. § 761.20(c) and, therefore, a violation of Section 15 of TSCA, 15 U.S.C. § 2614.

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

33. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors and assigns.

34. Respondent stipulates that EPA has jurisdiction over the subject matter described in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO and without admitting or denying liability as to any claim alleged in the CAFO, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

35. Respondent hereby waives its right to contest any issue of law or fact set forth in this CAFO and to appeal the Final Order accompanying this Consent Agreement.

36. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violation alleged in this CAFO.

37. In accordance with the penalty criteria in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and in EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy (the "PCB Penalty Policy"), dated April 9, 1990, and in light of the violation and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is \$23,212.



38. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, with the title of the CAFO ("In Re: Facility Support Services, LLC") and docket number ("TSCA-01-2009-0039") noted on the check, to the order of the "Treasurer, United States of America," in the amount of twenty-three thousand two hundred and twelve dollars (\$23,212) to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check must be mailed to the Regional Hearing Clerk:

Regional Hearing Clerk  
U.S. EPA, Region 1  
One Congress Street  
Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023.

and to:

Steven C. Schlang  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street  
Suite 1100 (SEL)  
Boston, Massachusetts 02114-2023

39. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with all applicable requirements of federal law.

40. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all


applicable provisions of federal, state, and local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

41. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA, 15 U.S.C. §§ 2601 et seq., or any regulations promulgated thereunder.

42. Each party shall bear its own costs and fees in this proceeding, including attorneys fees, and Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

43. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

FOR FACILITY SUPPORT SERVICES, LLC

Name  8/28/09  
Date

Title President  
Facility Support Services, LLC

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Joel Blumstein  
Acting Manager  
Legal Enforcement Office  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I

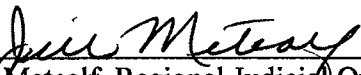
9/15/09  
Date


In the Matter of Facility Support Services, LLC  
TSCA-01-2009-0039

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Jill Metcalf, Regional Judicial Officer (detour)  
U.S. Environmental Protection Agency, Region 1

  
Date

**In the Matter of Facility Support Services, LLC**  
**Docket No. TSCA-01-2009-0039**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Consent Agreement and Final Order (CAFO) was sent to the following persons, in the manner specified, on the date below:


Original and one copy  
hand-delivered:

Judy Lao-Ruiz  
Regional Hearing Clerk  
U.S. EPA, Region 1  
One Congress Street (RAA)  
Boston, MA 02114-2023

Copy of CAFO  
Certified Mail, Return Receipt  
Requested

David J. Monz  
Updike, Kelly & Spellacy  
One Century Tower  
265 Church Street  
New Haven, CT 06510

Dated: 9/16/2009



Steven Schlang  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023  
Tel: (617) 918-1773  
Fax: (617) 918-0773  
Email : schlang.steven@epa.gov

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for Steven Schlang  
Name of Case Attorney

9/16/09  
Date

in the ORC (RAA) at 918-1454  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2009-0039

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Facility Support Services, Inc.  
2685 State Street  
Hamden, CT 06517

Total Dollar Amount of Receivable \$ 23,212.00 Due Date: 10/16/09

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_  
Phone Number