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EPA --REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. TSCA- 10-2009-0185
MID-WILLAMETTE FAMILY YMCA, INC.:)	
)	
Respondent)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Mid-Willamette Family YMCA, Inc., hereby agrees to issuance of the Final Order contained in Part VI of this CAFO.

1 waste in a Storage for Disposal Facility and receive an EPA PCB activity identification number
2 under 40 C.F.R. §§ 761.202(b)(2) and 761.205(a).

3 3.4. Respondent owned and stored PCB waste in the form of capacitors and
4 transformers at its facility located at 3350 National Way SW in Albany, Oregon. EPA received
5 no notice of PCB waste at this facility as required by 40 C.F.R. § 761.205(a) and did not issue a
6 PCB activity identification number under 40 C.F.R. § 761.202(b).

7 3.5. Samples taken from the capacitors at Respondent's facility identified PCBs with
8 concentrations up to 960,000 ppm.

9 3.6. Respondent is a "person" as defined by TSCA PCBs regulations. 40 C.F.R. §
10 761.3.

11 **IV. VIOLATIONS**

12 4.1. Respondent's failure to notify EPA prior to its PCB waste handling activities
13 constitutes a violation of 40 C.F.R. § 761.205(a).

14 4.2. Respondent's storage of PCB waste at the facility at 3350 National Way S.W.
15 located in Albany, Oregon without obtaining an EPA PCB identification number constitutes a
16 violation of 40 C.F.R. § 761.202(b).

17 4.3. Under TSCA Section 16, 15 U.S.C. § 2615(a)(1), and 40 C.F.R. Part 19, EPA
18 may assess a civil penalty not to exceed \$32,500 per violation against "any person who
19 violates" certain requirements of TSCA, including those respecting the storage and disposal of
20 PCBs.

1 **V. CONSENT AGREEMENT**

2 5.1. For purposes of this proceeding, Respondent stipulates that EPA has jurisdiction
3 over the subject matter alleged herein.

4 5.2. For purposes of this proceeding, Respondent expressly waives any right to
5 contest the allegations and to appeal the Final Order set forth in Part VI, below.

6 5.3. For purposes of this proceeding, Respondent neither admits nor denies the
7 specific factual allegations contained in Parts III and IV of this CAFO.

8 5.4. As required under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B),
9 EPA has taken into account the nature, circumstances, extent, and gravity of the alleged
10 violation; the Respondent's ability to pay, history of prior such violations, and degree of
11 culpability; the effect on Respondent's ability to continue to do business; and such other
12 matters as justice may require. In particular, EPA received and reviewed specific financial
13 information indicating Respondent's limited ability to pay a penalty in this case. After
14 considering all of these factors, EPA has determined and Respondent YMCA agrees that an
15 appropriate penalty to settle this action is in the amount of two thousand dollars (**\$2,000**).

16 5.5. Respondent consents to issuance of the Final Order set forth in Part VI, below,
17 and agrees to pay the total civil penalty set forth in Paragraph 5.4, above, within 30 days of the
18 effective date of this Final Order.

19 5.6. Payment under this CAFO shall be made by cashier's check or certified check,
20 payable to the order of "Treasurer, United States of America" and delivered to the following
21 address:

22 U.S. Environmental Protection Agency
23 Fines and Penalties
24 Cincinnati Finance Center
25 P.O. Box 979077
St. Louis, MO 63197-9000

1 Respondent shall note on the check the title and docket number of this action.

2
3 5.7. Along with payment, a transmittal letter shall be provided which sets forth the
4 information contained in the caption of this case, including the case title and docket number,
5 together with a description of the obligation being satisfied by the payment. At the time of
6 payment, a copy of the check and transmittal letter shall also be provided to Daniel Duncan,
7 EPA Region 10 Office of Compliance and Enforcement, and to Carol Kennedy, Regional
8 Hearing Clerk. The mailing address for Mr. Duncan is 1200 Sixth Ave., Suite 900, OCE-084,
9 Seattle, WA 98101. The address for Ms. Kennedy is 1200 Sixth Ave., Suite 900, ORC-158,
10 Seattle, WA 98101.

11 5.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its
12 due date, the entire unpaid balance of penalty and accrued interest shall become immediately
13 due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action
14 to collect the assessed penalty under TSCA. In any such collection action, the validity, amount,
15 and appropriateness of the penalty shall not be subject to review.

16 5.9. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should
17 Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date,
18 Respondent shall be responsible for payment of interest on any unpaid portion of the assessed
19 penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §
20 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that
21 no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of
22 the effective date of the Final Order contained herein. The penalty described in Paragraph 5.4,
23 above, including any additional costs incurred under this Paragraph 5.9, represents an
24 administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal
25 taxes.

1 5.10. The undersigned representative of Respondent certifies that he/she is fully
2 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
3 document.

4 5.11. Unless otherwise specified in this CAFO, each party shall bear its own costs in
5 bringing or defending this action.

6 5.12. The provisions of this CAFO shall bind Respondent and its agents, servants,
7 employees, successors, and assigns.

8 5.13. The above provisions are STIPULATED AND AGREED upon by Respondent
9 and EPA.

10 DATED:

MID-WILLAMETTE FAMILY YMCA, INC.:

11
12 July 22, 2009

13 Jim Anderson

14
15 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

16
17 July 29, 2009

18 Clifford J. Villa

19 CLIFFORD J. VILLA
20 Assistant Regional Counsel
21 For Complainant

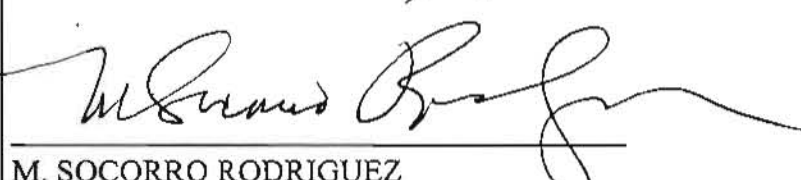
1 **VI. FINAL ORDER**

2 6.1. The terms of the foregoing Parts I-V are hereby ratified and incorporated by
3 reference into this Final Order. Respondent is hereby ordered to comply with the foregoing
4 terms of the settlement.

5 6.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
6 pursuant to TSCA for the violation alleged in Parts III and IV, above. In accordance with 40
7 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to
8 pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations
9 of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to
10 comply with all applicable provisions of TSCA and regulations issued thereunder.

11 6.3. This Final Order shall become effective upon filing.

12
13 SO ORDERED this 3rd day of August, 2009.

14 
15
16 M. SOCORRO RODRIGUEZ
17 Regional Judicial Officer
18 U.S. Environmental Protection Agency
19 Region 10
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: MID-WILLAMETTE FAMILY YMCA, INC., DOCKET NO.: TSCA-10-2009-0185** was filed with the Regional Hearing Clerk on August 4, 2009.

On August 4, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Clifford Villa, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on August 4, 2009, to:

James W. Spickerman, Esquire
Gleaves Swearingen et al
975 Oak Street, Suite 800
P.O. Box 1147
Eugene, OR 97440

DATED this 4th day of August 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10