



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

DEC 12 2012

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number 7009 1680 0002 1319 6726

Mr. Timothy Kinsella  
Senior Vice President  
Birdsall Services Group  
611 Industrial Way West  
Eatontown, New Jersey 07724

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 DEC 13 A 9:31  
REGIONAL HEARING  
CLERK

Re: In the Matter of Lustig Enterprises, LLC; National Waste & Recycling Services, LLC;  
and Birdsall Services Group  
Docket No. TSCA-02-2013-9101

Dear Mr. Kinsella:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer 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 Judicial Officer. 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 your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Vivian Chin of my staff at (732) 906-6179 or by electronic mail at [chin.vivian@epa.gov](mailto:chin.vivian@epa.gov), should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

DEC 12 2012

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number 7009 1680 0002 1319 6740

Mr. Gary Carnevale  
President  
National Waste & Recycling Services, LLC  
225 Turnbull Avenue  
Hamilton, New Jersey 08610

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 DEC 13 A 9:31  
REGIONAL HEARING  
CLERK

Re: In the Matter of Lustig Enterprises, LLC; National Waste & Recycling Services, LLC;  
and Birdsall Services Group  
Docket No. TSCA-02-2013-9101

Dear Mr. Carnevale:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer 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 Judicial Officer. 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 your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Vivian Chin of my staff at (732) 906-6179 or by electronic mail at chin.vivian@epa.gov, should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief  
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Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

DEC 12 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
Article Number 7009 1680 0002 1319 6733

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 DEC 13 A 9 31  
REGIONAL HEARING  
CLERK

Mr. Gerald Lustig  
Lustig Enterprises LLC  
1051 Route 22  
Bridgewater, NJ 08807

Re: In the Matter of Lustig Enterprises, LLC; National Waste & Recycling Services, LLC;  
and Birdsall Services Group  
Docket No. TSCA-02-2013-9101

Dear Mr. Lustig:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer 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 Judicial Officer. 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 your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Vivian Chin of my staff at (732) 905-6179 or by electronic mail at chin.vivian@epa.gov, should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11

2012 DEC 13 A 9:31

REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
Lustig Enterprises, LLC; :  
National Waste & Recycling Services, LLC; :  
Birdsall Services Group :  
 :  
Respondents. :  
 :  
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act. :  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2013-9101

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 Lustig Enterprises, LLC; National Waste & Recycling Services, LLC; and Birdsall Services Group violated Section 6(e) of the 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 Lustig Enterprises, LLC; National Waste & Recycling Services, LLC; and Birdsall Services Group 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. Respondents are Lustig Enterprises, LLC; National Waste & Recycling Services, LLC; and Birdsall Services Group.
2. Respondent Lustig Enterprises, LLC owned the facility located in and around 1201 U.S. Highway 22 West Bridgewater, New Jersey (hereinafter "the facility"), and Respondents National Waste & Recycling Services, LLC, and Birdsall Services Group operated and/or controlled PCB cleanup activities at the facility.
3. None of Respondents notified EPA of Respondent's PCB remediation waste activities by providing written notice to the Regional Administrator at least 30 days prior to the date the cleanup of the site began in accordance with the specifications and requirements of 40 C.F.R. § 761.61(a)(3).

4. On or about July 19, 2012, Complainant sent to each of the Respondents a "Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act", which alleged that Respondents had violated the PCB regulations at 40 C.F.R. Part 761.

5. On September 13, 2012, the parties met for an informal settlement conference.

#### CONCLUSIONS OF LAW

1. Each Respondent 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. Each Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

3. Failure to notify is a violation of 40 C.F.R. § 761.61(a)(3), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C), respectively.

4. For the violation described in paragraph 3, above, Respondents are jointly and severally liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

#### 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 at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondents, that each Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Each 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, each 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.

3. In accordance with paragraph 4 in the "Conclusions of Law" section, above, Respondents shall collectively pay, by cashier's or certified check, a civil penalty in the amount of **THIRTY-ONE THOUSAND EIGHT HUNDRED AND SEVENTY-FIVE DOLLARS (\$31,875)** 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, Missouri 63197-9000

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

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

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

and

Vivian Chin, Environmental Engineer  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

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 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. Each Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Each Respondent consents to the issuance of the accompanying Final Order. Each Respondent agrees that all terms of settlement are set forth herein.

5. Each Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and collectively agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Each 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. Each Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Each 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, the Deputy Regional Administrator, or the Regional Judicial Officer 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 each Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

In the matter of Lustig Enterprises, LLC; National Waste & Recycling Services, LLC; and Birdsall Services Group  
Docket Number TSCA-02-2013-9101

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. Each Respondent consents to service upon Respondents of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

BY:   
Lustig Enterprises, LLC

NAME: Carol Lustig  
(PLEASE PRINT)

TITLE: Member

DATE: 11/10/12

RESPONDENT:

BY:   
National Waste & Recycling Services,  
LLC

NAME: Paul Abdalla  
(PLEASE PRINT)

TITLE: CEO

DATE: 11/26/2012

RESPONDENT:

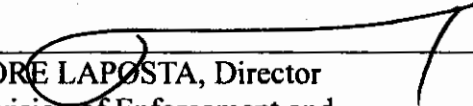
BY: Tim C. Kinsella  
Birdsall Services Group

NAME: Timothy C. Kinsella  
(PLEASE PRINT)

TITLE: Senior Vice President

DATE: 11-19-12

COMPLAINANT:

  
\_\_\_\_\_  
DORE LAPOSTA, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, NY 10007

DATE: December 5, 2012

In the Matter of Lustig Enterprises, LLC;  
National Waste & Recycling Services, LLC;  
Birdsall Services Group  
Docket Number TSCA-02-2013-9101

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Lustig Enterprises, LLC; National Waste & Recycling Services, LLC; Birdsall Services Group, bearing Docket Number TSCA-02-2013-9101. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: December 6, 2012

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 Lustig Enterprises, LLC;  
National Waste & Recycling Services, LLC;  
Birdsall Services Group  
Docket Number TSCA-02-2013-9101

CERTIFICATE OF SERVICE

This is to certify that on the 12<sup>th</sup> day of December 2012, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2005-9207, by certified mail, return receipt requested, to:

Mr. Gerald Lustig  
Lustig Enterprises LLC  
1051 Route 22  
Bridgewater, NJ 08807

Mr. Gary Carnevale  
President  
National Waste & Recycling Services, LLC  
225 Turnbull Avenue  
Hamilton, New Jersey 08610

Mr. Timothy Kinsella  
Senior Vice President  
Birdsall Services Group  
611 Industrial Way West  
Eatontown, New Jersey 07724

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.

