

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	U.S. EPA Docket No. TSCA-03-2008-0366
Flaw, Inc.	:	
1600 South 25th Street	:	
Easton, PA 18042	:	
	:	CONSENT AGREEMENT
Respondent	:	
	:	
Recycle Oil Company	:	
1600 South 25th Street	:	Proceeding under Sections 15 and 16
Easton, PA 18042	:	of the Toxic Substances Control Act,
	:	15 U.S.C. §§ 2614 and 2615
Facility	:	

RECEIVED
SEP 29 PM 1:59
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION III
PHILADELPHIA, PA

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, EPA Region III (“Complainant”) and Flaw, Inc. (“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 of Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (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 certain alleged violations of TSCA and the regulations implementing TSCA Section 15, as set forth in the Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions (hereinafter, the “PCB regulations”), 40 C.F.R. Part 761. Section 15(1)(c) states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605. The violations cited herein pertain to 46,000 gallons of oil contaminated with PCBs that were stored by Respondent at its collection and processing facility, Recycle Oil Company (“Respondent’s Facility”).
 2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
 3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
-

4. 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.
5. 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.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

8. Complainant has determined that Respondent has violated the PCB regulations, and adopts the following findings of fact and conclusions of law in accordance with Sections 22.18(b)(2) and .14(a)(2) and (3) of the Consolidated Rules of Practice:
 - A. Respondent is a Pennsylvania corporation existing since 1995 that owns and operates a business enterprise under the fictitious name, Recycle Oil Company. Respondent's Facility is located at 1600 South 25th Street in Easton, Pennsylvania.
 - B. Respondent is a person within the meaning of 40 C.F.R. § 761.3 and as such is subject to TSCA and the regulations promulgated thereunder.
 - C. On January 10, 2006, EPA Region 3 issued a Notice of Determination/Notice of Noncompliance to Respondent in response to Respondent's Self-Disclosure, pursuant to Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618 (April 11, 2000) ("Audit Policy"), of violations pertaining to unmanifested PCB-contaminated oil that was received by, stored at, and then shipped from its Easton, PA Facility.

COUNT I

- D. 40 C.F.R. § 761.3 provides, in pertinent part, that a party is a "commercial storer of PCB waste" when that party is an owner or operator of a facility that is subject to the PCB storage unit standards of 40 C.F.R. § 761.65(b)(1) or (c)(7), or meets the alternate storage criteria of 40 C.F.R. § 761.65 (b)(2), and who engages in storage activities involving PCB waste generated by others.
- E. 40 C.F.R. § 761.3 defines "PCB Waste" as "those PCBs and PCB Items that are subject to the disposal requirements of [40 C.F.R. Part 761, subpart D]."
- F. 40 C.F.R. § 761.3 defines "Transporter of PCB Waste," for purposes of 40 C.F.R. Part 761, subpart K, as "any person engaged in the transportation of regulated PCB

waste by ... highway ... for purposes other than consolidation by a generator.”

- G. The PCB regulations at 40 C.F.R. § 761.65(d) state, in part, that “commercial storers of PCB waste are prohibited from storing any PCB waste at their facilities after August 2, 1990 unless they have submitted by August 2, 1990 a complete application for a final storage approval under [40 C.F.R. § 761.65(d)(2)].” However, 40 C.F.R. § 761.3 provides that “if a facility's storage of PCB waste generated by others at no time exceeds a total of 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste.”
- H. TSCA Section 15 provides, *inter alia*, that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated under TSCA Section 6.
- I. On March 27, 2007, Respondent sent an unmanifested waste report to EPA Region III pursuant to 40 C.F.R. § 761.211(c). The report indicates that one of Respondent’s used oil collection trucks received PCB-contaminated used oil from a customer and transported such oil to Respondent's Facility on February 26, 2007.
- J. The PCB-contaminated used oil referred to in paragraph 8.I, above, was subsequently combined with additional volumes of used oil in storage tanks at Respondent’s Facility. After combining the volumes of used oil, Respondent stored 46,000 gallons of used oil, which contained 100 ppm PCBs, in storage tanks at Respondent's Facility between February 27, 2007 and March 16, 2007.
- K. The PCB-contaminated used oil transported to and stored at Respondent's Facility contained PCBs at regulated levels that were subject to the disposal requirements of 40 C.F.R. Part 761, subpart D, and therefore was “PCB waste” as defined at 40 C.F.R. § 761.3.
- L. As of June 6, 2007, approximately 7,000 gallons of the PCB-contaminated used oil remained at Respondent’s Facility.
- M. Pursuant to 40 C.F.R. §§ 761.3 and 761.65(d), by storing more than 500 gallons of PCB waste generated by another entity at Respondent's Facility, Respondent was, from February 27, 2007 until June 6, 2007, a “commercial storer of PCB waste” who was required to submit to EPA an application for approval to store PCB waste.
- N. Respondent does not have approval and has never submitted an application for approval to store PCB waste at Respondent’s Facility.
- O. By storing such PCB waste at Respondent’s Facility without EPA approval, Respondent violated 40 C.F.R. § 761.65(d).

COUNTS II - III

- P. Pursuant to 40 C.F.R. § 761.205(a)(2), all transporters and commercial storers of PCB waste, who first engage in PCB waste handling activities after February 5, 1990, shall notify EPA of their PCB waste activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities.
- Q. Because it transported PCB waste as alleged in paragraphs 8.I and .K, above, Respondent was a “transporter of PCB waste” as that term is defined in 40 C.F.R. § 761.3.
- R. Pursuant to 40 C.F.R. § 761.202(b)(2) and (3), it is unlawful to transport or accept for commercial storage PCB waste without having received an EPA identification number from EPA.
- S. On March 20, 2007, Respondent notified EPA of its status as a generator of PCB waste at an onsite storage facility.
- T. Respondent did not engage in PCB waste handling activities prior to February 6, 1990, never notified EPA of its intention to transport and commercially store PCB waste, and did not receive an EPA identification number from EPA prior to transporting or commercially storing PCB waste.
- U. By failing to notify EPA prior to transporting and commercially storing PCB waste at Respondent's Facility as alleged in paragraphs 8.I, .J, and .L, above, Respondent violated 40 C.F.R. § 761.205(a)(2).
- V. By transporting and accepting for commercial storage PCB waste prior to receiving an EPA identification number from EPA, Respondent has violated 40 C.F.R. § 761.202(b)(2) and (3).

COUNT IV

- W. Pursuant to 40 C.F.R. § 761.3, a “PCB Container” is “any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.”
- X. Pursuant to 40 C.F.R. § 761.40(a), PCB containers in existence on or after July 1, 1978 must be marked in the manner illustrated in Figure 1 in 40 C.F.R. § 761.45(a).
- Y. Respondent stored PCB waste in above-ground storage tanks #2, #3, and #5 at Respondent's Facility between February 27, 2007 and at least June 6, 2007.
- Z. Between February 27, 2007 and March 6, 2007, the tanks containing the PCB waste were not marked per the manner specified in 40 C.F.R. § 761.45(a).

- AA. Storage tanks #2, #3, and #5 are “PCB containers” within the meaning of 40 C.F.R. § 761.3.
- BB. By storing PCB waste in tanks that were not marked per the requirements in 40 C.F.R. § 761.45(a), Respondent has violated 40 C.F.R. § 761.40(a).

Civil Penalty

- 9. In settlement of EPA’s claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of Forty-Nine Thousand, Five Hundred Fifty-Five Dollars (\$49,555.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon the effective date of this CAFO as provided in paragraph 22, below.
- 10. The aforesaid settlement amount is consistent with the provisions and objectives of TSCA and 40 C.F.R. Part 761. Complainant determined the appropriate penalty for the violations described in this Consent Agreement based on consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 16 of TSCA, *i.e.*, the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, 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) to calculate the amount set forth in paragraph 9, above.
- 11. The civil penalty of Forty-Nine Thousand, Five Hundred Fifty-Five Dollars (\$49,555.00) set forth in paragraph 9, above, shall be paid in six (6) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:
 - a. 1st Payment: The first payment in the amount of Eight Thousand, Four Hundred Dollars (\$8,400.00), consisting of a principal payment of \$8,400.00 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - b. 2nd Payment: The second payment in the amount of Eight Thousand, Three Hundred Dollars (\$8,300.00), consisting of a principal payment of \$8,097.04 and an interest payment of \$202.96, shall be paid within sixty (60) days on which this CAFO is mailed or hand-delivered to Respondent;
 - c. 3rd Payment: The third payment in the amount of Eight Thousand, Three Hundred Dollars (\$8,300.00), consisting of a principal payment of \$8,218.49 and an interest payment of \$81.51, shall be paid within ninety (90)

days of the date on which this CAFO is mailed or hand-delivered to Respondent;

- d. 4th Payment: The fourth payment in the amount of Eight Thousand, Three Hundred Dollars (\$8,300.00), consisting of a principal payment of \$8,238.75 and an interest payment of \$61.25, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- e. 5th Payment The fifth payment in the amount of Eight Thousand, Three Hundred Dollars (\$8,300.00), consisting of a principal payment of \$8,259.07 and an interest payment of \$40.93, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- f. 6th Payment The sixth payment in the amount of Eight Thousand, Three Hundred Sixty-Two Dollars and Twenty-Two Cents (\$8,362.22), consisting of a principal payment of \$8,341.65 and an interest payment of \$20.57, shall be paid within one hundred and eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of Forty-Nine Thousand, Five Hundred Fifty-Five Dollars (\$49,555.00) and total interest payments in the amount of Four Hundred Seven Dollars and Twenty-Two Cents (\$407.22).

- 12. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in paragraph 11, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for an shall pay administrative handling charges and late payment penalty charges as described in paragraphs 16.c and .d, below, in the event of any such failure or default.
- 13. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in paragraph 11, above, Respondent may pay the entire civil penalty of Forty-Nine Thousand, Five Hundred Fifty-Five Dollars (\$49,555.00) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in paragraph 16.b, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

14. a. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to paragraph 11, above, and/or the full penalty pursuant to paragraphs 12 or 13, above, and/or any administrative fees and late payment penalties, in accordance with Paragraphs 16.c and .d, below, by electronic funds transfer (“EFT”), as described below, or by sending a corporate check or certified check, made payable to the order of “**United States Treasury.**”

b. Checks sent by regular US Postal Service mail delivery must be sent to:

U.S. E.P.A.
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact numbers = Craig Steffen (513-487-2091) or Eric Volck (513-487-2105).

c. The following address can be used for common carriers such as FedEx, Airborne, DHL, and UPS:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-4087

d. Checks drawn on foreign banks with no USA branches no matter what the currency should be sent directly to:

Cincinnati Finance
US EPA, MS-NWD
26 W. ML King Drive
Cincinnati, OH 45268-0001

e. Any EFT shall be transmitted to:

Wire Transfer

Federal Reserve Bank of New York
ABA = 021030004
Environmental Protection Agency
Account Number: 6810727
SWIFT address: FRNYUS33
33 Liberty Street

New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

ACH

(also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank

ABA: 051036706

Account Number: 310006

CTX Format Transaction Code 22 - checking

Environmental Protection Agency
808 17th Street NW
Washington, D.C. 20074

f. There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field.

Open the form and complete required fields.

g. All payments by Respondent shall reference its name and address and the Docket Numbers of this case (TSCA-03-2008-0366).

15. At the time of payment, Respondent shall send a notice of such payment to:

John Ruggero
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

16.
 - a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling the delinquent debts.
 - b. 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 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 rate in accordance with 40 C.F.R. § 13.11(a).
 - c. The costs of the Agency'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 during which the penalty remains unpaid.
 - d. A penalty charge of six percent 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(c). 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).
17. Respondent agrees not to deduct for federal taxation purposes the civil penalty paid pursuant to this CAFO.

Other Applicable Laws

18. This CAFO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local law, regulation, or permit.

Reservation of Rights

19. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims for penalties for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including the Respondent, in response to any condition that 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. 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 Regional Hearing Clerk.

Full and Final Satisfaction

20. Payment of the penalty specified in paragraph 9, above, in accordance with the terms and conditions specified herein, shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. 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.

Parties Bound

21. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, successors, agents, and/or assigns of the Parties. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

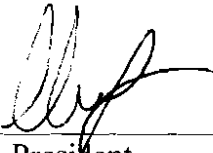
22. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

23. 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 CAFO.


For Respondent:

Date: 9/18/08

By: 
Nick Cirillo, President
Flaw, Inc.


For Complainant:

Date: 9/24/08

By: 
John Ruggero
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/26/08

By: 
Abraham Ferdas
Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of: :
: U.S. EPA Docket No. TSCA-03-2008-0366
Flaw, Inc. :
1600 South 25th Street :
Easton, PA 18042 :
: **FINAL ORDER**
Respondent :
: **Proceeding under Sections 15 and 16**
Recycle Oil Company : **of the Toxic Substances Control Act,**
1600 South 25th Street : **15 U.S.C. §§ 2614 and 2615**
Easton, PA 18042 :
Facility :

RECEIVED
2008 SEP 29 PM 2:00
REGION III OFFICE
EPA REGION III PHILA, PA

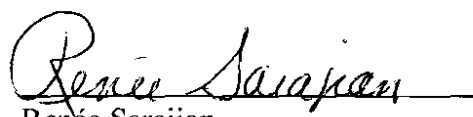
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Flaw, Inc., 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, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615. NOW, THEREFORE, PURSUANT TO Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a penalty of Forty-Nine Thousand, Five Hundred Fifty-Five Dollars (\$49,555.00) and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 9/29/08


Renee Sarajian
Regional Judicial Officer
U.S. EPA - Region III

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, I hand-delivered to the Regional Hearing Clerk, EPA Region III the original CONSENT AGREEMENT AND FINAL ORDER (CAFO) in *In the Matter of: Flaw, Inc.*, Docket No. TSCA-03-2008-0366, and the original memo from Mr. William C. Early and Mr. Abraham Ferdas transmitting the CAFO to the Regional Judicial Officer (RJO). In addition, I sent, to the following individual via the manner specified below, a true and correct copy of the CAFO with original signatures and a true and correct copy of the transmittal memo to the RJO:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED:

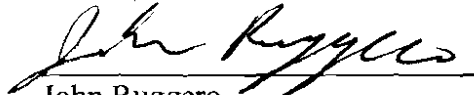
Nick Cirillo, President
Flaw, Inc.
d/b/a Recycle Oil Company
1600 South 25th Street
Easton, PA 18042

RECEIVED
EPA REGION III OFFICE
PHILADELPHIA, PA

2008 SEP 29 PM 1:59

RECEIVED

September 29, 2008
Date


John Ruggiero
Senior Assistant Regional Counsel
EPA Region III (3RC30)
1650 Arch St.
Philadelphia, PA 19103-2029
215-814-2142