

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
Posel Corporation)	
212 Walnut Street)	U.S. EPA Docket Number
Philadelphia, PA 19106)	TSCA-03-2012-0096
)	
RESPONDENT)	Consent Agreement
)	
Northeast Racquet Club and Fitness)	Proceeding Under Sections 15 and 16
Center)	of the Toxic Substances Control Act,
9381 Krewston Road)	15 U.S.C. §§ 2614 and 2615
Philadelphia, PA 19115)	
)	
FACILITY)	

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to 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 or Suspension of Permits 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules, this Consent Agreement and the attached Final Order (collectively referred to herein as the "CAFO") both commence and conclude an administrative proceeding against Posel Corporation ("Respondent") to resolve alleged violations of TSCA and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB regulations"). The Complainant is the Director, Land and Chemicals Division, United States Environmental Protection Agency,

Region III ("Complainant").

2. This Consent Agreement is entered into by Complainant and Respondent to resolve the United States Environmental Protection Agency's ("EPA") claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.

4. EPA and the Respondent expressly acknowledge that the provisions of Paragraph 3 shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.

5. Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 3, above.

6. Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 3, above.

7. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in the Findings of Fact and Conclusions of Law, and any right to appeal the accompanying Final Order.

8. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.

9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

10. Respondent agrees not to contest Complainant's jurisdiction with respect to: (1) the execution of this Consent Agreement; (2) the issuance of the attached Final Order; or (3) the enforcement thereof.

11. Nothing in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which 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.

13. 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. Respondent reserves all available rights and defenses it may have to defend itself any such action.

14. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

15. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. Complainant has determined that Respondent has violated TSCA § 6(e), and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and .14(a)(2) and (3).

17. As used herein, the terms "PCB", "PCB Item" and "PCB Transformer" shall each have the definition and meaning for such terms set forth in 40 C.F.R. § 761.3.

18. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Sections 5 or 6.

19. Respondent is a Pennsylvania corporation, and is a "person" as defined in 40 C.F.R. § 761.3.

20. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of the Northeast Racquet Club and Fitness Center located at 9381 Krewstown Road, Philadelphia, PA (hereinafter, the "Facility").

21. On February 4, 2011, an inspector from the EPA conducted a compliance inspection (the "Inspection") at the Facility pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610. The purpose of the Inspection was to evaluate Respondent's compliance with regulations promulgated pursuant to TSCA Section 6(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls ("PCBs") and PCB Items at the Facility.

22. The Posel Corporation registered one PCB Transformer at the Facility with the EPA on December 22, 1998. It has been in use since its installation there in 1970.

23. 40 C.F.R. § 761.180(a) requires that each owner of a facility using one or more PCB Transformers shall develop and maintain at the facility, or a central facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items by July 1 of each year concerning the prior calendar year, and shall make those records available for inspection

upon request by EPA.

24. EPA's inspection report states that Respondent had not developed PCB annual documents for 2006, 2007 and 2008.

25. Subsequently, Respondent provided annual documents for those years that were not on site but were maintained by Respondent at a central facility. In addition, Respondent has completed and submitted to EPA PCB Annual Documents and Worksheets for 2007 to 2011.

Count 1

26. Paragraphs 1 – 25 are incorporated herein as if set forth at length.

27. 40 C.F.R. § 761.40(a)(2) and (c)(1) require that as of January 1, 1979, all PCB Transformers be marked in the manner specified in § 761.45(a), *i.e.*, with the large PCB mark referred to as the "M_L" format in that section. In addition, 40 C.F.R. § 761.40(j) requires that the means of access to a PCB Transformer must be marked as described above, as of December 1, 1985.

28. At the time of the inspection, the PCB Transformer referred to in paragraph 22, above, was identified with a nameplate indicating that the transformer contained 395 gallons of Pyranol. Pyranol is a tradename for dielectric fluid containing PCBs at concentrations above 500 parts per million, and typically greater than 500,000 parts per million.

29. At the time of the inspection, the PCB Transformer enclosure was marked with a label stating that the unit is "PCB-Contaminated Electrical Equipment" and that it contained PCBs at a concentration between 50 and 499 ppm. Neither the PCB Transformer nor its enclosure was marked with the M_L marking as required by 40 C.F.R. § 761.40(a)(2) and (c)(1) and (j), respectively.

30. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.40(c)(1) and (j), by failing to mark the PCB Transformer and its enclosure referred to in

paragraphs 28 and 29, respectively, with the mark M_L specified in § 761.45(a).

Counts 2-10

31. Paragraphs 1 – 30 are incorporated herein as if set forth at length.

32. 40 C.F.R. § 761.30(a)(1)(ix) and (xii) require owners or operators of PCB Transformers: 1) to visually inspect each PCB Transformer at least once per calendar quarter (*i.e.*, every three months), 2) to prepare records of these inspections, continuing to do so while the PCB Transformer is in use, or in storage for reuse, and 3) to maintain such records until at least three years after its disposal.

33. At the time of the Inspection, Respondent failed to provide EPA's inspector with evidence of completion of quarterly visual inspections of the PCB Transformer referred to in paragraph 22, above, for at least the three years prior: 2008, 2009, and 2010. Respondent later provided EPA with (1) copies of written reports of annual visual leak inspections for those years, and (2) an affidavit that confirms at least weekly external visual inspections of the PCB Transformer. Therefore, Respondent kept records for only one of the four quarterly inspections required to be performed in each of those years. Respondent's failure to maintain the records documenting the performance of three of the four quarterly visual inspections required annually during 2008 through 2010 constitutes nine violations of 40 C.F.R. § 761.30(a)(1)(ix) and (xii) and Section 15 of TSCA.

III. CERTIFICATION OF COMPLIANCE AND SETTLEMENT CONDITIONS

34. As to all relevant provisions of TSCA and the PCB regulations allegedly violated as described above in Counts 1 through 10 of the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA, by its signature hereto, that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is in compliance with all relevant provisions and regulations. Specifically, Respondent certifies that it is in compliance with 40 C.F.R.

§ 761.40(a)(2), (c)(1), and (j) which require that a PCB Transformer and its enclosure be properly labeled as outlined in § 761.45(a). Respondent also certifies that it is in compliance with the requirements of 40 C.F.R. § 761.30(a)(1)(ix) and (xii), performing quarterly visual inspections of its PCB Transformer and maintaining the records thereof accordingly. Respondent certifies that it is in compliance with 40 C.F.R. §761.180(a).

IV. CIVIL PENALTY

35. Respondent agrees to pay a civil penalty in the amount of **Twenty-Five Thousand Dollars (\$25,000)** for the above cited violations, in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a copy of this CAFO fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of the signed CAFO is mailed or hand-delivered to Respondent.

36. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *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 in the manner described in EPA's *Polychlorinated Biphenyls (PCBs) Penalty Policy* (April 9, 1990). To determine the penalty amount set forth in paragraph 35, above, Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19; and, *Revision*

to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009, Rosemarie A. Kelley (April 6, 2010), p. 9-B Insert (TSCA § 6 (PCB) Gravity Based Penalty Matrix).

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties 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.

- a. 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. 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 on the portion of the civil penalty not paid within 30 calendar days 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).
- b. 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 Chapter 9, *Receivables and Billings*, of EPA's *Resource Management Directives System* (No. 2540-09), 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 the penalty remains unpaid.
- c. 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). If the assessment of the penalty charge on the debt is required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

38. Respondent shall remit the full penalty assessed by this CAFO, plus any interest, administrative fees and late payment penalties owed, by cashier's check, certified check, or electronic wire transfer, payable to "**United States Treasury**" in accordance with this Section IV, and the following instructions:

a. All payments made by check and sent by U.S Postal Service regular mail shall be addressed to:

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

The customer service contact for this address is Heather Russell, who may be reached at 513-487-2044.

b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section d, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

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

d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004

Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The Federal Reserve customer service contact may be reached at 212-720-5000.

e. All electronic payments made through the Automated Clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

f. On-line payment option

WWW.PAY.GOV

Enter "sfo 1.1" in the search field. Open and complete the form.

g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

h. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (TSCA-03-2012-0096).

i. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)

1650 Arch Street
Philadelphia, PA 19103-2029

and

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

39. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO.

V. SCOPE OF SETTLEMENT

40. Payment by Respondent of the civil penalty, plus any interest and fees, assessed in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations cited herein. Compliance with this CAFO shall not be a defense to any action commenced by the United States at any time for any other violation of the federal laws and regulations administered by EPA.

VI. PARTIES BOUND

41. This CAFO shall apply to and be binding upon the EPA, the Respondent and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind Respondent to the terms and conditions of this CAFO.

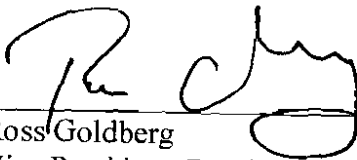
VII. EFFECTIVE DATE

42. The effective date of this Consent Agreement is the date on which it and the accompanying Final Order, are filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent Posel Corporation

Date: 3/9/12

By:

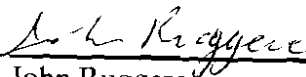


Ross Goldberg
Vice President, Posel Corporation

For Complainant United States Environmental Protection Agency, Region III:

Date: 3/21/12

By:




John Ruggero
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 3/28/12

By:



Abraham Ferdas, Director
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)

Posel Corporation)
212 Walnut Street)
Philadelphia, PA 19106)

RESPONDENT)

Northeast Racquet Club and Fitness)
Center)
9381 Krewston Road)
Philadelphia, PA 19115)

FACILITY)

U.S. EPA Docket Number
TSCA-03-2012-0096

Final Order

Proceeding Under Sections 106 and 107
of the Toxic Substances Control Act
15 U.S.C. §§ 2614 and 2615

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 EPA REGION III, PHILA. PA**

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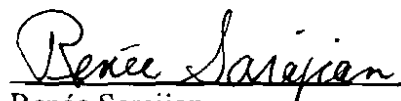
FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Posel Corporation ("Respondent"), 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, and based upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of, among other things, the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Respondent is hereby ordered to pay a civil penalty of, **Twenty-Five Thousand Dollars (\$25,000)**, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 3/30/12


 Renée Sarajian
 Regional Judicial Officer
 U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

John Ruggero
Senior Assistant Regional Counsel

Mail Code: 3RC30
Phone: (215)814-2142
Facsimile: (215)814-2603

March 30, 2012

VIA UPS

Robert Fox, Esq.
Manko, Gold, Katcher, & Fox, LLP
401 City Ave., Suite 500
Bala Cynwyd, PA 19004

Re: *In the Matter of: Posel Corporation*
EPA Docket No. TSCA-03-2012-0096

Dear Mr. Fox:

Enclosed is the second original of the fully executed Consent Agreement and Final Order (CAFO), which was filed today with the Regional Hearing Clerk, in the above-referenced matter. A copy of the cover memo transmitting the CAFO to the Regional Judicial Officer for signature is also enclosed.

EPA encourages Posel to continue its efforts to comply with the PCB regulations and its other environmental compliance obligations in the future.

EPA-Region III frequently issues a press release to announce the filing of a CAFO. If a press release will be issued regarding this CAFO, a copy will be faxed to you or your designee simultaneously with its transmittal to the news wire services. Please send me the contact information for the person who should receive a copy of any press release.

We appreciate the cooperation and time spent by Posel's management and you in resolving this matter. Please contact me at 215-814-2142 if any questions arise.

Sincerely,


John Ruggero

Enclosures

cc: Mr. Craig Yussen (3LC61)
Regional Hearing Clerk (3RC00)

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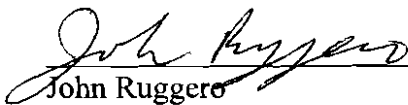
CERTIFICATE OF SERVICE

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: Posel Corporation*, EPA Docket No. TSCA-03-2012-0096, and the original memo from Ms. Marcia Mulkey and Mr. Abraham Ferdas transmitting the CAFO to the Regional Judicial Officer (RJO). In addition, I caused an identical copy of the CAFO with original signatures and a copy of the memo to be sent to the following individual via the manner specified:

UPS Next Day:

Mr. Robert Fox, Esq.
Manko, Gold, Katcher, & Fox, LLP
401 City Ave., Suite 500
Bala Cynwyd, PA 19004

March 30, 2012
Date


John Ruggere

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

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EPA REGION III, PHILA. PA

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EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: John Ruggero March 30, 2012
Name of Contact person *Date*

in the R3 ORC at 215-814-2142
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/Consent Agreement CFO COLLECTS PAYMENT

SF Jud. Order/Consent Decree. CFO COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
Posel Corporation d/b/a Northeast Racquet Club and Fitness Cener

The Total Dollar Amount of Receivable \$25,000.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2012-0096

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office LCD

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REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Cincinnati CFO | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 4. Regional Counsel |