U.S. Environmental Protection Agency-Reg 2
2015 SEP 29 PM 12: 16
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of 38 COAH Associates, LLC, Respondent. Proceeding under the Toxic Substances Control Act.	**CONSENT AGREEMENT AND FINAL ORDER** **Docket No. TSCA-02-2015-9101**

This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) ("TSCA" or the "Act"). Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides, in part, that "[a]ny person who violates a provision of section 2614 [of TSCA, 15 U.S.C. § 2614]…shall be liable to the United States for a civil penalty…."

The Agency, under authority of TSCA, has promulgated regulations that govern the manufacture, processing, distribution in commerce, use, disposal, storage and marking of, *inter alia*, polychlorinated biphenyls (PCBs) and PCB-containing wastes. These regulations are codified at 40 C.F.R. Part 761.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against 38 COAH Associates, LLC, without further litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. The following constitute EPA's Findings of Fact and Conclusions of Law based on information of which EPA, Region 2, was aware as of the date this CA/FO has been executed.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of EPA, Region 2, and Complainant has been duly delegated the authority to commence this proceeding. Respondent is 38 COAH Associates, LLC.

EPA FINDINGS OF FACT

1. Respondent is 38 COAH Associates, LLC, a limited liability company organized and existing under the laws of the State of New Jersey with offices at 1000 Portside Drive in Edgewater, New Jersey.

2. Fred Daibes, who maintains an office at 22 Route 5 in Edgewater, New Jersey, is a shareholder and managing member of Respondent.

3. Until the late 1960s, the Aluminum Corporation of America ("Alcoa") conducted business operations at a site the address of which is 660 River Road in Edgewater, New Jersey (hereinafter, "the Site"), and these operations included the manufacture of fire-resistant hydraulic fluids that contained PCBs. Among the structures on the Site for which Alcoa was responsible and in which it conducted operations was a building known as Building 12. Testing demonstrated that some of the walls of Building 12 were contaminated with PCBs. Several of these walls subsequently collapsed and were stored in the shell of Building 12 until later disposal. A portion of Building 12 was demolished in the summer of 2013.

4. Respondent has informed EPA that, on or about February 10, 2015, a corrective deed was recorded with title to the Site going from Respondent back to North River Mews Associates, LLC, the latter entity having mistakenly transferred title to the Site to Respondent on or about May 22, 2006, as part of the subdivision of an adjacent plot.

5. On or about June 16, 2014, duly designated representatives of EPA conducted an inspection of and at the Site (hereinafter, "the June inspection").

6. At the time of the June inspection Respondent owned and was otherwise responsible for the Site, which was then primarily a vacant lot slated for development.

7. Building 12 was demolished by Waterside Construction, LLC ("Waterside"), a limited liability company organized and existing under New Jersey law. Fred Daibes is managing member of Waterside.

8. On various occasions in September and October 2013, in conjunction with the work for which Respondent retained Waterside to undertake, Waterside moved truckloads of crushed concrete that had resulted from the demolition of Building 12 and transported the material to Veterans Field, the address of which is 1167 River Road in Edgewater, New Jersey. Waterside had previously secured a contract to effect renovation work at Veterans Field. The crushed concrete was used at Veterans Field as fill material.

9. The crushed concrete consisted, in whole or significant part, of "PCB remediation waste" (as defined in 40 C.F.R. § 761.3).

10. In or around November 2013, Respondent disposed of off-site as scrap metal two underground storage tanks (USTs) that had contained diesel/fuel oil with PCB concentrations of over 500 parts per million (ppm). These two tanks had earlier been installed at the Site and were unknown to Respondent at the time of their installation.

11. At no time were the aforementioned underground storage tanks decontaminated in accordance with the decontamination standards of 40 C.F.R. § 761.79(b) or the decontamination procedures provided in 40 C.F.R. § 761.79(c).

12. The aforementioned underground storage tanks were neither disposed of in an incinerator that complies with 40 C.F.R. § 761.70 nor or in a chemical waste landfill that complies with 40 C.F.R. § 761.75.

13. Commencing in November 2013 and through the period including the time of the EPA June inspection, a period of greater than 180 days, Respondent had been storing at the Site PCB bulk remediation waste and/or PCB bulk product waste (*i.e.* PCB-contaminated soil).

14. The aforementioned PCB-contaminated soil had been generated at the Site, in part, as a result of the removal of the two USTs from under Building 12 and in part as a result of the demolition of Building 12.

15. The aforementioned PCB-contaminated soil did not have a cover properly installed and/or maintained to prevent contact between such soil and precipitation such as rain and snow.

16. In or around October 2013, two 250-gallon polyester totes containing PCB waste for commercial off-site storage or disposal were transported by Waterside from the Site to a yard operated and controlled by Waterside without Respondent having identified either such tote on the accompanying shipping manifest (EPA Form 8700-22) as containing PCB waste.

17. The aforementioned (paragraph 16, above) PCB waste constituted PCB-contaminated oil from the previously referenced underground storage tanks.

18. In or around August 2014, Respondent offered for transport the previously referenced (paragraphs 13, 14 and 15, above) PCB-contaminated soil for commercial off-site storage or disposal, arranged for and then had transported said soil for such disposal, with manifests accompanying each such transport.

19. On each of the aforementioned (paragraph 18, above) manifests, Respondent improperly listed the generator of such waste (*i.e.* it failed to indicate that it had been the generator of such waste) and Respondent also failed to correctly indicate the date such waste had first been removed in preparation for disposal (*i.e.* the date Respondent began to stockpile the excavated PCB-contaminated soil).

EPA CONCLUSIONS OF LAW

1. Respondent has been, and continues to be, a "person" within the meaning of 40 C.F.R. § 761.3.

2. Respondent, for the period including but not limited to the time of the June inspection, was, in conducting its operations at the Site, 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.

3. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it, *inter alia*, unlawful for a person to fail or refuse to comply with any rule promulgated pursuant to the authority of Section 6 of TSCA, 15 U.S.C. § 2605.

4. Pursuant to 40 C.F.R. § 761.50(b)(3), PCB remediation waste must be disposed of in accordance with 40 C.F.R. § 761.61.

5. Pursuant to 40 C.F.R. § 761.61, PCB remediation waste must be disposed of in accordance with one of the following three provisions: (a) 40 C.F.R. § 761.61(a)(5)(i)(B)(*2*)(*iii*), for the disposal of bulk PCB remediation waste in a hazardous waste landfill permitted by EPA under Section 3004 of RCRA [Resource Conservation and Recovery Act; 42 U.S.C. § 6924] or by a State authorized under Section 3006 of RCRA [42 U.S.C. § 6926]; (b) 40 C.F.R. § 761.61(b)(2), for the disposal of such waste in accordance with the performance-based disposal methods prescribed therein; or (c) 40 C.F.R. § 761.61(c), for the disposal of such waste in accordance with the provisions therein for a risk-based disposal approval.

6. Respondent's aforementioned (paragraph 8 of the "EPA Findings of Fact," above) disposal of the PCB remediation waste (the crushed concrete) was not effected in accordance with 40 C.F.R. § 761.61, and thus Respondent's failure to do so constitutes a failure or refusal to comply with 40 C.F.R. § 761.50(b)(3).

7. Respondent's failure or refusal to comply with 40 C.F.R. § 761.50(b)(3) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

8. Forty C.F.R. § 761.60(c)(1) provides, *inter alia*, that a "PCB container" (as defined in 40 C.F.R. § 761.3) with a PCB concentration at or above 500 ppm must, unless decontaminated in accordance with the 40 C.F.R. § 761.79 standards or procedures, be disposed of in an incinerator that complies with 40 C.F.R. § 761.70 or in a chemical waste landfill that, *inter alia*, complies with 40 C.F.R. § 761.75.

9. Each of the aforementioned (paragraphs 10, 11 and 12 of the "EPA Findings of Fact," above) underground storage tanks constituted a PCB container within the meaning of 40 C.F.R. § 761.3.

10. Respondent, having neither decontaminated the aforementioned (paragraphs 10, 11 and 12 of the "EPA Findings of Fact," above) underground storage tanks in accordance with the 40 C.F.R. § 761.79 provisions nor disposed of such tanks in an incinerator that complies with 40 C.F.R. § 761.70 or in a chemical waste landfill that, *inter alia*, complies with 40 C.F.R. § 761.75, failed or refused to comply with 40 C.F.R. § 761.60(c)(1).

11. Respondent's failure or refusal to comply with 40 C.F.R. § 761.60(c)(1) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

12. Pursuant to 40 C.F.R. § 761.65(c)(9), bulk PCB remediation waste or PCB bulk product waste may be stored at the site of generation for 180 days subject to various conditions, including that such waste is wholly covered so as to prevent contact with precipitation.

13. Respondent's aforementioned storage (paragraphs 13, 14 and 15 of the "EPA Findings of Fact," above) of the PCB-contaminated soil did not comply with the requirements set forth in 40 C.F.R. § 761.65(c)(9) for the storage of such waste.

14. Respondent's failure or refusal to comply with 40 C.F.R. § 761.65(c)(9) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

15. Forty C.F.R. § 761.207(a)(1) provides, in part, that a generator who relinquishes control over PCB wastes by transporting or offering to transport by his/her own vehicle or by the vehicle owned by another person, PCB waste for commercial off-site storage or disposal must prepare a manifest on EPA Form 8700-22 on which such generator specifies, for each bulk load of PCBs, the identity of such waste and the earliest date of removal from service for disposal.

16. Respondent's aforementioned (paragraphs 16 and 17 of the "EPA Findings of Fact," above) failure to identify on EPA Form 8700-22 that each of the two 250-gallon totes contained PCB waste constitutes a failure or refusal to comply with C.F.R. § 761.207(a)(1).

17. Each of Respondent's aforementioned (paragraphs 18 and 19 of the "EPA Findings of Fact," above) failures to correctly list the generator of the stockpiled PCB-contaminated

soil (itself) and to list the date such waste had been removed from service for disposal constitutes a failure or refusal to comply with C.F.R. § 761.207(a)(1).

18. Each of Respondent's failures or refusals to comply with 40 C.F.R. § 761.207(a)(1) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

19. Each of the following is a rule promulgated by EPA under authority of Section 6 of TSCA, 15 U.S.C. § 2605: (a) 40 C.F.R. § 761.50; (b) 40 C.F.R. § 761.65; (c) 40 C.F.R. § 761.60; and (d) 40 C.F.R. § 761.207.

20. For each aforementioned (paragraphs 7, 11, 14 and 18 of this section) violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; (b) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **EIGHTY-SEVEN THOUSAND FIVE HUNDRED ($87,500) DOLLARS,** to be paid in two installments, as follows: (a) the first installment in the amount of **FORTY-THREE THOUSAND SEVEN HUNDRED FIFTY ($43,750.00) DOLLARS** to be paid within forty-five (45) days[1] of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said date hereinafter referred to as the "due

[1] For purposes of this CA/FO, days shall mean calendar days.

date"), and (b) the second installment, in the amount of **FORTY-THREE THOUSAND SEVEN HUNDRED FIFTY ($43,750.00) DOLLARS** to be paid within six months of the due date.

2. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If payment is made by cashier's check or by certified check, each such check shall be made payable to the **"Treasurer, United States of America,"** and shall be identified with a notation thereon listing the following: ***In re 38 COAH Associates, LLC,*** **Docket Number TSCA-02-2015-9101**. If payment is made by either form of check, such payment shall be mailed to the following address:

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

3. Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when each such payment is made in accordance with the provision below.

   a. Amount of Payment

   b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

   c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

   d. Federal Reserve Bank of New York ABA routing number: **021030004**

   e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**

   f. Name of Respondent: **38 COAH Associates, LLC**

   g. Case docket number: **TSCA-02-2015-9101**

4. The following provide additional payment instructions for Respondent:

   a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then each EFT shall be *received* on or before the date specified.

b. Whether Respondent makes payments by cashier's check, certified check or by the EFT method, Respondent shall promptly, after the making of each payment, furnish reasonable proof that each required payment has been made, and such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

c. Failure to pay the specified amounts in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

d. Furthermore, if any required payment is not received on or before the date when it is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date payment was to have been made through the date payment has been received. In addition, a late payment handling charge of $15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

5. Each of the civil penalty provided for in this section and any stipulated penalty Respondent shall be required to pay pursuant to the following paragraph constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

6. If Respondent fails to make payment in accordance with the schedule set forth above, Respondent shall pay stipulated penalties for each day that payment(s) is(are) late in accordance with the following schedule:

Penalty per Day	Period of Non-compliance
$200	1st through 30th day
$300	31st through 90th day
$500	Every day thereafter

Respondent shall utilize the same procedures as set forth above to make any stipulated penalty payment as set forth above. EPA in its sole discretion may reduce or eliminate any stipulated penalty otherwise due.

7. By entering into this Consent Agreement, Respondent hereby certifies to the best of the knowledge and information of the person signing this Consent Agreement on behalf of Respondent that Respondent, in its operations and activities, complies with all applicable PCB regulatory requirements and prohibitions as set forth in 40 C.F.R. Part 761.

8. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

   Debra Rosen, Esq.
   Archer & Greiner, P.C.
   One Centennial Square
   33 East Euclid Avenue
   Haddonfield, New Jersey 08033

9. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty (*i.e.* $87,500.00) and of any stipulated penalty that becomes due in accordance with the terms and schedule set forth above.

10. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

11. This Consent Agreement is being voluntarily and knowingly entered into by the parties. Upon Respondent making full payment of the penalty amount set forth above (*i.e.* $87,500.00) in accordance with the terms herein, and pursuant to 40 C.F.R. § 22.31(a), the final order accompanying this consent agreement shall resolve those causes of action as set forth above. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law by Respondent.

12. Respondent, in entering this Consent Agreement, hereby waives its right to seek or obtain any hearing on the administrative claims set forth in the "EPA Findings of Fact" and/or the "EPA Conclusions of Law" sections of this document, and on the terms and conditions set forth in the "Agreement on Consent" section of this Consent Agreement, and on the accompanying Final Order.

13. This Consent Agreement, and any provision herein, shall not be construed as an admission

of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce the Consent Agreement, any of its terms and conditions, and/or the accompanying Final Order.

14. Each party shall bear its own costs and fees in connection with this proceeding.

15. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement.

In re 38 COAH Associates, LLC
Docket Number TSCA-02-2015-9101

RESPONDENT:

BY: _____

NAME: FRED A. DAIBES
[PRINT]

TITLE: MANAGING MEMBER

DATE: 9/28/15

COMPLAINANT:

_____
Dore LaPosta, Director PATRICK DURNCIL FOR DORE LAPOSTA
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

DATE: SEPTEMBER 28, 2015

In re 38 COAH Associates, LLC
Docket Number TSCA-02-2015-9101

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of 38 COAH Associates,* LLC, bearing Docket Number TSCA-02-2015-9101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect 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 under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

DATED: Sept. 29, 2015
New York, New York

Judith A. Enck

JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency – Region 2

In re 38 COAH Associates, LLC
Docket No. TSCA-02-2015-9101

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been executed by the Region Administrator of the United States Environmental Protection Agency, Region 2, on September 29, 2015, in the above-referenced administrative enforcement proceeding in the following manner to the addressee listed below:

Original and One Copy
By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Dated: September 29, 2015
New York, New York

Lee A. Spielmann