

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Bostik, Inc.	:	Violations of The Clean Streams Law,
11320 Watertown Plank Road	:	The Hazardous Sites Cleanup Act
Wauwatosa, WI	:	and the Solid Waste Management Act
	:	
	:	South Abington, Abington, North Abington
	:	and Scott Townships, Lackawanna County

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty ("CACP") is entered into this 13th day of APRIL 2011, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Bostik, Inc. ("Bostik").

The Department has found and determined the following:

A. The Department is the agency of the Commonwealth with the duty and authority to administer and enforce the provisions of The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1 *et seq.*, ("the Clean Streams Law"); The Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. § 6020.101 *et seq.* ("HSCA"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. § 6018.101 *et seq.* ("Solid Waste Management Act") and Section 1917-A of the Administrative Code of 1929, the Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code").

B. Bostik, Inc. is a Delaware corporation registered to conduct business in the Commonwealth of Pennsylvania with a registered business address of 11320 Watertown Plank Road, Wauwatosa, WI 53226-3434.

C. Bostik is the owner of a Facility ("Bostik Facility") which manufactured adhesives from 1977 until it was closed in 2003. The Bostik Facility is located on five acres within the Ivy Industrial Park, 1200 Griffin Pond Road, South Abington Township, Lackawanna County, Pennsylvania, with a PIN No. 0700403001102. Located within two miles of the Bostik Facility are several hundred private homes and businesses, many of which rely on potable wells for their home water supply.

D. The Ivy Industrial Park Site ("Site") contains certain VOC's in the soils and groundwater, including, but not limited to, PCE and TCE. PCE and TCE are considered "hazardous substances" in accordance with Section 103 of HSCA, 35 P.S. § 6020.103.

E. Some or all of the hazardous substances, including, but not limited to, PCE and TCE, are contained in one or more groundwater plumes which have impacted certain private water supply wells in and around the Site, known as the "Affected Area". The Affected Area is located in Scott, South Abington, North Abington and Abington Townships, Lackawanna County, PA.

F. On April 23, 2008, the Department and Bostik entered into a Consent Order and Agreement ("Bostik CO&A") whereby Bostik agreed to, *inter alia*, complete site characterization and remediation activities under the Department's guidance and assume responsibility for the quarterly volatile organic compound ("VOC") sampling of the perimeter wells and certain homes with carbon filtration treatment systems which were located within the Affected area.

G. Bostik has conducted environmental investigations of the Bostik Facility property, as well as various other locations within the Affected Area including, but not limited to, the installation of monitoring wells and soil borings ("Characterization Activities").

H. Documents provided to the Department by Bostik and the recollection of the chemical distributor indicate that from approximately 1978 through 1983, cleaning products containing PCE were utilized at the Bostik Facility.

I. On October 31, 2005, soil gas sampling performed by the Department on Bostik's property around the facility detected PCE at 5.5 parts per billion in soil gas vapor on the northeast corner of the building near doors off of the kettle area.

J. Section 501(a) of the Solid Waste Management Act, 35 P.S. § 6018.501(a), states:

It shall be unlawful for any person or municipality to use, or continue to use, their land or the land of any other person or municipality as a solid waste ... treatment or disposal area without first obtaining a permit from the department as required by this act; . . .

K. Section 610 of the Solid Waste Management Act, 35 P.S. § 6018.610, states:

It shall be unlawful for any person or municipality to:

(1) Dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; . . .

L. The release of PCE onto the land at the Bostik facility without a permit constitutes a violation of Sections 501(a) and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.501(a) and 6018.610.

M. Section 1 of the Clean Streams Law, 35 P.S. § 691.1 states:

“Industrial waste” shall be construed to mean any liquid, gaseous, radioactive, solid, or other substance, not sewage, resulting from any manufacturing or industry, or from any establishment, as herein defined, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers, or other coal mine processing operations. “Industrial waste” shall include all such substances whether or not generally characterized as a waste.

N. Floor cleaner containing PCE which flowed to soils and water at the Bostik Facility is an “industrial waste” as defined by Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

O. Section 301 of the Clean Streams Law, 35 P.S. § 691.301 states:

No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.

P. Section 307(c) of the Clean Streams Law, 35 P.S. § 691.307(c) states:

A discharge of industrial wastes without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the Department is hereby declared to be a nuisance.

Q. “Industrial waste” was released into soil at the Bostik facility and migrated into the waters of the Commonwealth without a permit in violation of Sections 301 and 307(c) of the Clean Streams Law, 35 P.S. § 691.301 and 691.307(c).

R. Section 1 of the Clean Streams Law, 35 P.S. § 691.1 states:

“Pollution” shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.

S. Section 401 of the Clean Streams Law, 35 P.S. § 691.401 states:

It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property

owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

T. Substances were released into the soil at the Bostik facility and migrated into the waters of the Commonwealth resulting in pollution in violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

U. The past and present conditions at the Site constitute a release and threatened release of hazardous substances, as defined in Section 103 of HSCA, 35 P.S. § 6020.103.

V. The violations described in the preceding paragraphs constitute unlawful conduct under Sections 501(a) and 610(1), (2), (4) and (9) of the Solid Waste Management Act, 35 P.S. 6018.501(a) and 6018.610(1), (2), (4), and (9), Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and Sections 1101 and 1108 of the Hazardous Sites Cleanup Act, 35 P.S. 6018.1101 and 6018.1108, and subjects Bostik to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605, Section 605 of the Clean Stream Law, 35 P.S. § 691.605, and Section 1104 of the Hazardous Sites Cleanup Act, 35 P.S. § 6018.1104.

After full and complete negotiations of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Bostik as follows:

1. Assessment. In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605, Section 605 of the Clean Streams Law, 35 P.S. § 691.605, and Section 1104 of the Hazardous Sites Cleanup Act, 35 P.S. § 6018.1104, the Department hereby assesses a civil penalty of \$1,250,000.00, which Bostik hereby agrees to pay.

2. Civil Penalty Settlement. Within ten (10) days after the effective date of this CACP, Bostik shall pay the civil penalty assessed in Paragraph 1. This payment is in settlement of the Department's claim for civil penalties for the violations set forth, above. The payment shall be by corporate check or the like, made payable to Commonwealth of Pennsylvania and sent to Environmental Cleanup Program Manager, Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18711-0790.

3. Findings.

a. Bostik agrees that only the findings in Paragraphs A through K, M through P, R, and S are true and correct and, in any matter or proceeding involving Bostik and the Department, Bostik shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.

4. Reservation of Rights. The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings, except to the extent the Department has covenanted not to sue Bostik under the Consent Order and Agreement with Bostik and Sandvik, Inc. dated APRIL 13, 2011. Bostik reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.

5. Opportunity for Public Comment.

a. Pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, the Department shall publish a notice containing a summary of the terms of this CACP in the *Pennsylvania Bulletin* and in a newspaper of general circulation in the area of the Site, and the Department shall receive and consider comments relating to this CACP for a period of sixty (60) days from publication of this notice. This notice shall also be sent to Kenneth M. Kastner, Esquire, Counsel for Bostik, Inc., c/o Hogan Lovells US LLP, 555 Thirteenth Street, NW, Washington, DC 20004. The Department reserves the right to withdraw its consent to this CACP, if the comments disclose facts or considerations which indicate that this CACP is inappropriate, improper, or not in the public interest.

b. This CACP shall be final upon the date the Department files a response to any significant comments received during the public comment period, as described in Paragraph 5.a, above or notifies Bostik that no comments were received. If the Department notifies Bostik that it is withdrawing its consent to this CACP in response to public comment received pursuant to Paragraph 5.a, above, the terms of the CACP shall be void and of no effect and shall not be used as evidence in any litigation or other proceeding.

6. Effective Date. This CACP shall become effective upon notification from the Department that the public comment period has expired and no significant comments were received.

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Bostik certify, under penalty of law, as provided by 18 Pa. C. S. § 4904, that they are authorized to execute this CACP on behalf of Bostik, that Bostik consents to the entry of this CACP as an ASSESSMENT of the Department; that Bostik hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Bostik knowingly waives its right to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and


Chapters 5A and 7A; or any other provision of law. [Signature by Bostik's attorney certifies only that the agreement has been signed by Bostik after consulting with counsel.]

FOR BOSTIK, INC.:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



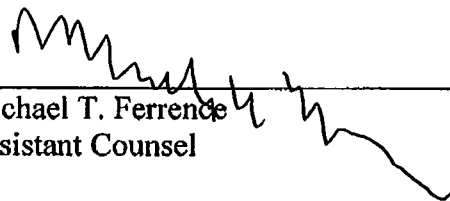
Name Kenneth C. Rast Jr.
Title UPCCFO



Name Eric Supey
Title Environmental Cleanup Program Manager



Name Kenneth M. Kastner, Esq.
Title Attorney for Bostik, Inc.



Name Michael T. Ferrence
Title Assistant Counsel

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