



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 21 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9189

Robert D. Van Vliet, President
Transformer Decommissioning, Inc.
9820 Westpoint Drive, Suite 300
Indianapolis, IN 46256


Consent Agreement and Final Order, Docket No. TSCA-05-2007-0014

Dear Mr. Van Vliet:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 21, 2007 prescribed in paragraphs 24 and 25. Please be certain that the number **BD** 2750747X013 and the docket number are written on both the transmittal letter and on the check. Payment is due by September 20, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Kendall Moore
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Robert Guenther, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. TSCA-05-2007-0014
)	
TRANSFORMER)	Proceeding to Assess a Civil
DECOMMISSIONING, INC.,)	Penalty under Section 16(a) of the Toxic
INDIANAPOLIS, INDIANA,)	Substances Control Act
)	
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. part 22.

2. Complainant is the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Transformer Decommissioning, Inc., a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, federal regulations at 40 C.F.R. § 22.13(b) provide that the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

JURISDICTION AND WAIVER OF HEARING RIGHTS

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

9. The Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations ("PCB rule") were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. part 761.

10. The PCB Rule, at 40 C.F.R. § 761.60, requires that, with some stated exceptions, PCB liquids be disposed of in an incinerator which complies with 40 C.F.R. § 761.70.

11. The PCB Rule, at 40 C.F.R. § 761.1(b)(5), states: “No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.”

GENERAL ALLEGATIONS

12. Respondent is corporation organized under the laws of the State of Delaware, and is thus a "person" as defined at 40 C.F.R. § 761.3.

13. Respondent is the owner and operator of a facility at 3478 West Marble Hill Road, Nabb, Indiana, which accepts and disposes of used electrical transformers and their contents.

14. On February 16, 2006, an inspector from U.S. EPA visited Respondent’s facility in Nabb, Indiana, and collected records from Respondent pertaining to its handling, storage and disposal of electrical transformers, including information regarding the identity of the transformers by serial number, their weight and the PCB concentration of fluids contained in them.

15. On February 3, 2006, Respondent had on site at its Nabb, Indiana, facility oil-filled transformers bearing the following serial numbers and possessing the associated characteristics:

<u>SERIAL NUMBER</u>	<u>PCBs (ppm)</u>	<u>WEIGHT (lbs.)</u>
3442832	110	429
D107460570	2390	496
930881	3059	214
894679	56	217
B548396	100	483
61AB451	76	436

SPECIFIC ALLEGATIONS

16. The PCB Rule, at 40 C.F.R. § 761.60, requires disposal of PCB liquids at concentrations of 50 ppm or greater in incinerators complying with 40 C.F.R. § 761.70.

17. The liquids in the transformers listed in paragraph 15, above, contained PCBs at concentrations in excess of 50 ppm.

18. On February 3, 2006, Respondent emptied the contents of the transformers listed in paragraph 15, above, into holding tanks containing non-PCB-contaminated oils.

19. Respondent initially failed to dispose of the contents of the transformers listed in paragraph 15, above, in an incinerator complying with 40 C.F.R. § 761.70.

20. Respondent's failure to dispose of PCB liquids at concentrations of 50 ppm or greater in an incinerator complying with 40 C.F.R. § 761.70 is a violation of the PCB Rule, and is thus an unlawful act under section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

CIVIL PENALTY

21. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of U.S. EPA to assess a civil penalty under section 16 of TSCA of up to \$25,000 for each unlawful act committed under section 15 of TSCA, 15 U.S.C. § 2614. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *note*, U.S. EPA increased the maximum penalty to \$32,500 for each violation occurring after March 15, 2004 (see 40 C.F.R. § 19.4). In determining the amount of any civil penalty, section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect

on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

22. U.S. EPA calculates penalties by applying its “Polychlorinated Biphenyls (PCBs) Penalty Policy,” dated April 9, 1990 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases.

23. In consideration of the facts of this matter, the criteria of the Response Policy and Respondent’s cooperation and good faith in resolving this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$27,625.

24. Within 30 days after the effective date of this CAFO, Respondent must pay the civil penalty by sending a cashier's or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA, Region 5
ATTN: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter (*In re: Transformer Decommissioning, Inc.*), the docket number of this CAFO and the billing document number _____.

25. A transmittal letter, stating the case title, Respondent’s complete address, the case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kendall Moore (DT-8J)
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

26. This civil penalty is not deductible for federal tax purposes.
27. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
28. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO had been entered by the Regional Hearing Clerk.

GENERAL PROVISIONS

29. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.
30. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

31. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws, and regulations.

32. This CAFO is a "final order" for purposes of U.S. EPA's PCB Response Policy.

33. The terms of this CAFO bind Respondent and its successors, and assigns.

34. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

35. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

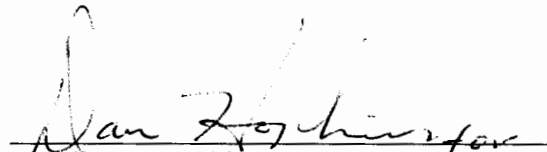
36. This CAFO constitutes the entire agreement between the parties.

SIGNATORIES

**COMPLAINANT,
U.S. Environmental Protection Agency**

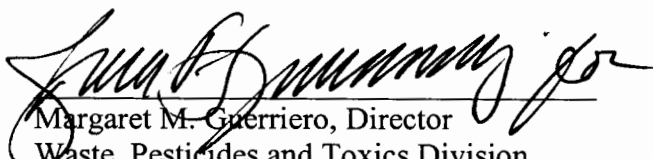
Date: 8-9-07

By:


Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division
U.S. EPA Region 5

Date: 8/14/07

By:


Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division
U.S. EPA Region 5

**RESPONDENT,
Transformer Decommissioning, Inc.**

Date: 8/2/07

By:

Patrick J. Brazill, CFO
Signature PATRICK J. BRAZILL

Title

**Consent Agreement and Final Order
IN THE MATTER OF:
Transformer Decommissioning, Inc.
Indianapolis, Indiana**

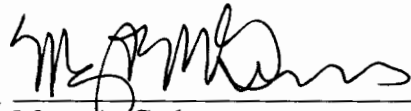
Docket No: TSCA-05-2007-0014

**Consent Agreement and Final Order
IN THE MATTER OF:
Transformer Decommissioning, Inc.
Indianapolis, Indiana
Docket No: TSCA-05-2007-0014**

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 8/17/07

By: 

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5

CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Transformer Decommissioning, Inc., was filed on August 21, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 9189, a copy of the original to the Respondents:

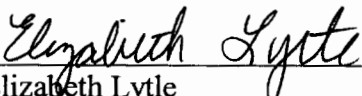
Robert D. Van Vliet, President
Transformer Decommissioning, Inc.
9820 Westpoint Drive, Suite 300
Indianapolis, IN 46256

Respondent's Counsel sent by first-class mail:

Donald M. Snemis, Esq.
Ice Miller, LLP
One American Square Suite 3100
Indianapolis, IN 46282

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert Guenther, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0014**