



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**MAY 07 2007**

4APT-PTSB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Monica Darby  
Facilities & Loss Prevention  
Environmental Affairs  
Memphis Light, Gas & Water  
220 S. Main Street  
Memphis, TN 38101

SUBJ: Memphis Light, Gas & Water  
Consent Agreement and Final Order  
Docket No.: TSCA-04-2007-2738(b)

Dear Ms. Darby:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter that has been filed with the Regional Hearing Clerk and served as required in the Consolidated Rules of Practice, 40 CFR § 22.6. Please make note of the provisions in Section V of the CAFO, with respect to payment of the assessed penalty, which is due within 30 days from the effective date of the CAFO.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA. Please note that the contact phone number at the bottom of the Notice has been changed to (202) 551-3470.

If you have any questions, please contact Mary Summers of the EPA Region 4 staff at (404) 562-8997.

Sincerely,

A handwritten signature in black ink that reads "Joanne Benante".

Joanne Benante  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
)  
)  
**MEMPHIS LIGHT, GAS & WATER,** )  
)  
)  
)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket Number: **TSCA-04-2007-2738(b)**

RECEIVED  
EPA REGION IV  
2007 MAY -7 PM 4: 13  
HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is **Memphis Light, Gas and Water, 220 S. Main Street, Memphis, Tennessee, hereinafter, ("Respondent")**.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. §22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

3. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605. Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. §2614. Any person who violates Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation, in accordance with Section 16(a) of TSCA, 15 U.S.C. §2615(a). For a violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed pursuant to 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation.

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. §2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

### **III. Factual Allegations**

5. Respondent is a utility company operating in the State of Tennessee and falls within the definition of "person" pursuant to 40 C.F.R. §761.3.

6. Sometime in June 2006, Respondent called EPA to report a spill. On November 21, 2006, EPA instructed Respondent to proceed with the cleanup of the spill. This cleanup had not been started as of March 1, 2007, violating the following regulation.

7. Respondent had a RTE Transformer, serial number 73600172, manufactured August 17, 1973, with a PCB concentration of 65 ppm that caught fire and resulted in a spill of low-concentration PCBs. On November 21, 2006, EPA Region 4 PCB Coordinator instructed Respondent to proceed with the cleanup, consistent with 40 C.F.R. 761 Subpart G requirements. As of March 1, 2007, Respondent failed to properly dispose of PCB liquid, violating 40 C.F.R. §761.60(a).

### **IV. Consent Agreement**

8. For the purposes of this CAFO, Respondent admits the jurisdictional allegation set out above but neither admits nor denies the factual allegation set out above.

9. Respondent waives its right to a hearing on the allegation contained herein.

10. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

11. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at this site.

12. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or pursue criminal enforcement.

13. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

**V. Final Order**

14. Respondent is assessed a civil penalty of Thirty-Two Thousand, Five Hundred Dollars (\$32,500.00) commencing thirty (30) days of the effective date of this CAFO.

15. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon lockbox 371099M  
Pittsburgh, PA 15251-7099.

**The check shall reference on its face the name and the Docket Number of the CAFO.**

If wire transfer of U.S. dollars must be wired to the following address:

Mellon Bank  
SWIFT address = MELNUS3P  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

16. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Mary Summers  
PCB & Chemical Products Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

constitute a violation of this CAFO.

18. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

19. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

20. This CAFO shall be binding upon the Respondent, its successors and assigns.

21. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mary Summers  
PCB & Chemical Products Management Section  
U.S. EPA - Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303  
(404) 562-8997

22. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

#### **VI. Effective Date**

23. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**RESPONDENT:** Memphis Light, Gas & Water  
**DOCKET NUMBER:** TSCA-04-2007-2738(b)

**APPROVED:**

By: *Joseph Lee, III* Date: 4/12/07

*Charlotte Knight Griffin*  
**CHARLOTTE KNIGHT GRIFFIN**  
MANAGER, LEGAL SERVICES

Name: Joseph Lee, III (Typed or Printed)

Title: President & CEO (Typed or Printed)

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

By: *Michael A. Schutt for* Date: 4/30/07

Beverly H. Banister  
Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

**APPROVED AND SO ORDERED** this 7<sup>th</sup> day of May, 2007.

By: *Susan B. Schub*  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

Air Division

Alan Dion  
US EPA, Region 4  
Office of Environmental Accountability

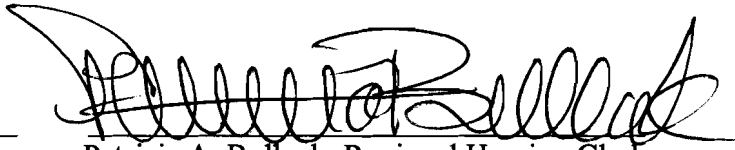
(Via EPA's Internal Mail)

Ms. Monica Darby  
Facilities & Loss Prevention  
Environmental Affairs  
Memphis Light, Gas & Water  
220 S. Main Street  
Memphis, TN 38101  
[mdarby@mlgw.org](mailto:mdarby@mlgw.org)

(Via Certified Mail, Return Receipt Requested or Electronically)

Date:

5-7-07



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

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

This form was originated by: Saundi Wilson on 5/3/07  
(Name) (Date)

in the DEA, OATGL at (404) 562-9504  
(Office) (Telephone Number)

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                      | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                              | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|  | <input type="checkbox"/> This is a modification  |

PAYEE: Memphis Light, Gas, & Water  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 32,500  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2007 2738(6)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date: \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |  |   |
|--|---|
| 1. Originating Office<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|