



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

OCT 13 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2641 7109
RETURN RECEIPT REQUESTED

Mr. Jon Spigel
Miller Compressing Company
1640 West Bruce Street
Milwaukee, Wisconsin 53204

Consent Agreement and Final Order In the Matter of
Miller Compressing Company. Docket No. **TSCA-05-2016-0001**

Mr. Spigel:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on October 13, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$80,010 is to be paid in the manner described in paragraphs 22 and 23. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Stawicki

For Kenneth Zolnierczyk
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|----------------------------|---|--|
| In the Matter of: |) | Docket No. <u>TSCA-05-2016-0001</u> |
| |) | |
| Miller Compressing Company |) | Administrative Proceeding Pursuant to |
| 1640 West Bruce Street |) | Section 16(a) of the Toxic Substances |
| Milwaukee, Wisconsin |) | Control Act, 15 U.S.C. § 2615(a). |
| |) | |
| 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 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5 (“EPA”).
3. Respondent is the Miller Compressing Company, a company doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (“CAFO”). 40 C.F.R. § 22.13(b).
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 interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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 (“PCB”) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Fed. Reg. 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (the “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 re-codified at 40 C.F.R. Part 761.

10. The PCB Rule at 40 C.F.R. § 761.1(b)(1) states, in part, that the regulations at 40 C.F.R. Part 761 apply to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.

11. The PCB Rule at 40 C.F.R. § 761.20(a) states, in part, that no person may use any PCB regardless of concentration in any manner other than in a totally enclosed manner unless otherwise authorized.

12. The PCB Rule at 40 C.F.R. § 761.50(a) states, in part, that any person storing or disposing of PCB waste must do so in accordance with the PCB Rule.

Factual Allegations and Alleged Violations

13. Respondent is a “person” as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

14. Respondent is the owner and operator of a scrap yard and metal recycling facility at 1640 West Bruce Street in Milwaukee, Wisconsin (the “Facility”).

15. EPA conducted an inspection at the Facility from July 28-29, 2010 (“July 10 Inspection”) to determine Respondent’s compliance with the PCB Rule. Respondent provided supplemental information concerning PCBs on August 11, 2010.

16. As a result of the July 2010 Inspection and follow-up information from Respondent, EPA determined PCB contaminated sludge collected from the demister unit was being applied to incoming scrap material, contrary to 40 C.F.R. § 761.20(a) and/or 40 C.F.R. § 761.50(a).

17. As a result of the July 2010 Inspection and follow-up information from Respondent, EPA determined that: (i) the surface of the tank located in the building next to the demister unit was contaminated with PCBs greater than $10 \mu\text{g}/100\text{cm}^2$; (ii) the demister access door was contaminated with PCBs greater than $10 \mu\text{g}/100\text{cm}^2$; and (iii) water sampled from the car pool sump contained PCBs above 3 ppb and exceeded the discharge limits to a waste water treatment plant, all contrary to 40 C.F.R. § 761.50(a).

18. EPA issued a Notice of Intent to File an Administrative Complaint to Respondent on November 13, 2013, regarding these alleged violations.

19. Subsequent to the July 2010 Inspection and Notice of Intent, EPA and Respondent have had several discussions, and Respondent has submitted documentation to demonstrate that it has addressed these alleged violations and is now in compliance with the PCB Rule.

Civil Penalty

20. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the EPA Administrator to assess a civil penalty 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*, EPA increased the maximum penalty to \$32,500 for each violation occurring after March 15, 2005 (see 40 C.F.R. § 19.4). In determining the amount of any civil penalty, Section 16 of TSCA requires 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, effect 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.

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

22. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), the PCB Penalty Policy, and the “Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13” (effective June 1, 1999), Complainant has determined that an appropriate civil penalty to settle this action is \$80,010. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and Respondent’s ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent’s efforts to correct the alleged violations.

23. Respondent agrees to pay a \$80,010 civil penalty for the TSCA violations alleged herein, within thirty (30) days after the effective date of this CAFO, by sending a cashier’s or

certified check, payable to "Treasurer, United States of America," to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

24. Respondent agrees to also send a notice of their payment that states Respondent's name, complete address, the amount paid and the case docket number, to the following EPA addressees when it pays the penalty (a copy of the check bearing this information would suffice):

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Ken Zolnierczyk (LC-8J)
Pesticides and Toxics Compliance Section
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604

25. This civil penalty is not deductible for federal tax purposes.

26. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action, under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in such a collection action.

27. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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 thirty (30) days past due. In addition, Respondent must pay a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

General Provisions

28. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: ckennedy@thompsoncoburn.com (for Respondent), and stanuch.terry@epa.gov (for Complainant). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

29. This CAFO only resolves Respondent’s liability for federal civil penalties for the violations alleged in this CAFO at Respondent’s Facility. Respondent neither admits nor denies the violations alleged in this CAFO.

30. This CAFO does not affect the rights of 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 the PCB Rule and other applicable federal, state and local laws. Except as provided above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

32. Respondent certifies that it has corrected the violations alleged herein and that, to the best of its knowledge, it is currently complying with the PCB Rule.

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


34. Each person signing this CAFO certifies that he or she has the authority to sign 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 attorneys' fees in this action.

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

MILLER COMPRESSING COMPANY, Respondent

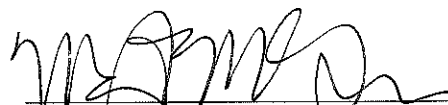
Sept 8, 2015
Date



[Name] Jon Sprgel
[Title] VP Operations Miller-
Compressing

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Complainant

10/5/2015
Date



Margaret M. Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5


CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: Miller Compressing Company, Milwaukee, Wisconsin
TSCA-05-2016-0001
Docket No. _____

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, United States Environmental Protection Agency - Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9 October 2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Miller Compressing Company
Docket Number: TSCA-05-2016-0001

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on October 13, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Jon Spigel
Miller Compressing Company
1640 West Bruce Street
Milwaukee, Wisconsin 53204

Copy by E-mail to
Attorney for Complainant:

Terrence Stanuch
Stanuch.terrence@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: October 13, 2015 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2641 7109