

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
CWC Division of Textron Inc.)
Muskegon, Michigan)
)
Respondent.)
_____)

Docket No. ~~TSCA-05-2020-0004~~ TSCA-05-2020-0005

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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is CWC Division of Textron Inc., a corporation operating under the laws of the State of Delaware, with a place of business at and about 1085 West Sherman Boulevard, Muskegon, Michigan.

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. Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), required EPA to promulgate regulations that prescribed methods for the disposal of polychlorinated biphenyls (PCBs), and that required PCBs to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use or disposal or with respect to any combination of such activities. The Polychlorinated Biphenyls 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 (PCB regulations) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB regulations were subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. 40 C.F.R. § 761.1(b)(1) states in part that the PCB regulations at 40 C.F.R. Part 761 apply to all persons who use or dispose of PCBs or PCB items; and that substances regulated by 40 C.F.R. Part 761 include dielectric fluids, oils, waste oils, sludges, slurries, sediments, soils, materials containing PCBs as a result of spills, and other chemical substances or combinations of substances.

11. 40 C.F.R. § 761.1(b)(3) states in part that provisions that apply to PCBs at concentrations of ≥ 500 ppm apply also to contaminated surfaces at PCB concentrations of $\geq 100\mu\text{g}/100\text{ cm}^2$.

12. The PCB regulations at 40 C.F.R. 761.3 define the term “person” to include any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. The PCB regulations define “disposal” to mean, *inter alia*, to intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB items, including spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB items.

14. The PCB regulations define the term “PCB Item” to mean, *inter alia*, any PCB Article or PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

15. The PCB regulations define the term “PCB Article” to mean any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. “PCB Article” includes, *inter alia*, transformers.

16. 40 C.F.R. § 761.60(a) requires in part that PCB liquids at concentrations of ≥ 500 ppm must be disposed of in an incinerator which complies with 40 C.F.R. § 761.70.

17. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), states in part that it is unlawful for any person to fail or refuse to comply with any requirement of TSCA or any rule promulgated under TSCA.

Factual Allegations

18. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the requirements and prohibitions set forth at 40 C.F.R. Part 761.

19. Respondent is the owner and operator of the facility at and about 1085 West Sherman Boulevard, Muskegon, Michigan (facility).

20. On February 23, 2016, a representative of EPA inspected the facility.

21. During the February 23, 2016 inspection of the facility, the EPA inspector examined PCB transformers.

Alleged Violations

22. On February 23, 2016, at the facility, EPA took a representative wipe sample of a substance on the ground adjacent to Respondent's transformer P64 (P64 substance).

23. The P64 substance contained one or more of dielectric fluids, oils, waste oils, sludges, slurries, sediments, soils, materials containing PCBs as a result of spills, and other chemical substances or combinations of substances.

24. The P64 substance contained 121,000 $\mu\text{g}/100\text{cm}^2$ PCBs.

25. At all times relevant to this CAFO, Respondent had disposed of the P64 substance, as disposal is defined at 40 C.F.R. § 761.3.

26. At all times relevant to this CAFO, Respondent's disposal of the P64 substance violated 40 C.F.R. § 761.60(a).

27. Respondent's violation of 40 C.F.R. § 761.60(a) set forth in paragraphs 22-26, above, violated Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

28. On February 23, 2016, EPA took a representative wipe sample of a substance on the ground adjacent to Respondent's transformer P68 (P68 substance).

29. The P68 substance contained one or more of dielectric fluids, oils, waste oils, sludges, slurries, sediments, soils, materials containing PCBs as a result of spills, and other chemical substances or combinations of substances.

30. The P68 substance contained 7,500 $\mu\text{g}/100\text{cm}^2$ PCBs.

31. At all times relevant to this CAFO, Respondent had disposed of the P68 substance, as disposal is defined at 40 C.F.R. § 761.3.

32. At all times relevant to this CAFO, Respondent's disposal of the P68 substance violated 40 C.F.R. § 761.60(a).

33. Respondent's violation of 40 C.F.R. § 761.60(a) set forth in paragraphs 28-32, above, violated Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

Civil Penalty

34. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA.

35. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is eleven thousand five hundred dollars (\$11,500). In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and such other matters as justice may require. In analyzing the facts and circumstances of this case in consideration of those statutory criteria, Complainant utilized the

“Polychlorinated Biphenyls (PCB) Penalty Policy,” dated April 9, 1990.

36. Within thirty (30) days after the effective date of this CAFO, Respondent must pay a civil penalty in the amount of \$11,500 for the TSCA violations alleged in this CAFO by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

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

The check must state Respondent’s name and the docket number of this CAFO.

37. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kenneth Zolnierczyk (ECR-17J)
RCRA Compliance Section 1
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

39. If Respondent does not pay the civil penalty in a timely fashion, EPA may refer this matter to the Attorney General of the United States, who will recover such amount, plus interest, in the appropriate district court of the United States 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 a

collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest 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 also must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

41. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: vezner.kris@epa.gov (for EPA), and JSchiff@textron.com (for Respondent).

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

43. 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.

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

45. Respondent certifies that it currently is complying with TSCA and the PCB regulations.

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

47. Each person signing this agreement 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.

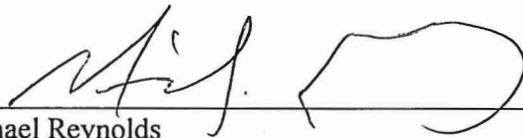
48. Each party agrees to bear its own costs and attorney's fees in this action.

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

CWC Division of Textron Inc., Respondent

8-5-20

Date



Michael Reynolds
Vice-President
CWC Division of Textron Inc.

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2020.09.21
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

In the Matter of: CWC Division of Textron Inc.

Docket No. ~~TSCA-05-2020-0004~~

TSCA-05-2020-0005

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE

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COYLE
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Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5