



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 27 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Fehrenbach, Esq.
Winston & Strawn, LLP
1700 K Street N.W.
Washington D.C. 20006-3817

SUBJ: Consent Agreement and Final Order - Docket No. TSCA-04-2016-2908(b)
Wise Alloys, LLC – Southern Reclamation Facility

Dear Mr. Fehrenbach:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC and the penalty due date is calculated from the effective date.

Thank you for your cooperation in reaching resolution of this matter. If you have any questions or concerns, please contact Attorney-Advisor, Ms. Lucia Mendez, at (404) 562-9637.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Lamberth".

Larry Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)

Wise Alloys, LLC – Southern Reclamation Plant)
1065 River Road)
Muscle Shoals, Alabama 35661-1282)

Respondent.)
_____)

Docket No. TSCA-04-2016-2908(b)

HEARINGS
CLERK

2016 SEP 27 AM 9:51

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

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 Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Restoration Division (RCRD), United States Environmental Protection Agency, Region 4 (EPA). The Respondent is Wise Alloys, LLC.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD has the authority to commence an enforcement Action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.
3. Complainant and the 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

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Randy Jackson
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8464

III. Specific Allegations

6. Respondent Wise Alloys, LLC is a limited liability company operating in the State of Alabama, and is a “person” as defined in 40 C.F.R. § 761.3. Wise Alloys LLC is the owner of a facility located at 1065 River Road, Muscle Shoals, Alabama, 35661 (the facility), and was a user of PCB Items.
7. On or about July 9, 2014, an inspection was conducted by the Alabama Department of Environmental Management (ADEM) at the facility to determine compliance with the PCB regulations.

8. During the July 9, 2014, inspection, ADEM made the following observations:
- a. The North Substation Yard (NSY) contained a General Electric 750 KVA transformer (serial # 884636) labeled as PCB contaminated (80 ppm). Also, the Main Substation Yard (MSY) contained a Westinghouse 750 KVA transformer (serial # 7351261) labeled as PCB-contaminated (75 ppm). The electrical equipment in the NSY and MSY areas had been de-energized since August of 2012. Respondent provided documentation (copies of electrical usage) to show that electrical service to the NSY and MSY areas had been cut-off since August 2012. Respondent drained and disposed of these two transformers on December 4, 2014 (Manifest # 013030276). The facility exceeded the 1-year time frame allowed under the PCB regulations to store PCB equipment for disposal;
 - b. The NSY and the MSY were utilized as storage areas since August of 2012, when the Reclamation facility was de-energized. According to statements made by the Respondent's response to EPA, the Reclamation facility, which contains the NSY and MSY, was de-energized in August of 2012. Respondent provided documentation (copies of electrical usage) to show that electrical service to the NSY and MSY areas had been cut-off since August 2012. The NSY and the MSY were not marked with Large PCB Marks as required;
 - c. PCB Items were observed in the MSY area without removed-from-service-dates affixed;
 - d. Eight bushings, with PCB concentrations of 500 ppm, were removed from the MSY and disposed of on December 4, 2014 (Manifest # 013030276). These bushings were taken out of service when the facility was de-energized in August of 2012. According to statements made by the Respondent in its response to EPA, the Reclamation facility, which contains the NSY and MSY, was de-energized in August of 2012. The facility exceeded the 1-year time frame allowed under the PCB regulations to store PCB equipment for disposal;
 - e. During the inspection, the Respondent was asked to provide inspection records and Respondent failed to provide inspection records for the PCB Items stored in the MSY;
 - f. The PCB equipment in the MSY was left in place in the electrical substation that used to be its operational location. There were no walls, roof or curbing in the electrical substation.
9. 40 C.F.R. § 761.3 defines "PCB Items" as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
10. 40 C.F.R. § 761.40(a)(10) requires storage areas used to store PCBs and PCB Items for disposal to be marked in accordance with 40 C.F.R. § 761.45(a). This requires that the storage area shall be marked with the large

PCB Mark (M_L). At the time of the inspection, the NSY and MSY storage areas were not marked with the large M_L, and did not meet the requirements of 40 C.F.R. § 761.40(a)(10). Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.40(a)(10).

11. 40 C.F.R. § 761.65(c)(5) requires that PCB Items in storage for disposal shall be checked for leaks at least once every 30 days. Respondent failed to provide records of inspections of the PCB Items listed in paragraph 8. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(5) .
12. 40 C.F.R. § 761.65(c)(8) requires that PCB Items must be marked with the date when they were removed from service for disposal. At the time of inspection, the PCB Items listed in paragraph 8 were not marked with the date the PCB Items were removed from service. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(8).
13. 40 C.F.R. § 761.65(a)(1) requires that PCB waste must be disposed within a 1-year time-frame from the date it was determined to be PCB waste and the decision was made to dispose of it. The PCB Items listed in Paragraph 8 were observed to be out of service during the July 9, 2014 inspection. Therefore, EPA alleges that the Respondent violated 40 C. F.R. § 761.65(a)(1).
14. 40 C.F.R. §761.65(b) requires the storage area to have an adequate roof and walls to prevent rain water from reaching stored PCBs and PCB Items, as well as an adequate floor and curbing to prevent releases. The MSY storage area failed to meet this criteria. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(b).

IV. Consent Agreement

15. For the purposes of this CAFO, the Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
16. The Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
17. For the purposes of achieving a resolution by settlement, the Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

18. The Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA and the PCB regulations.
19. This CAFO constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, the EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is Respondent's responsibility to comply with said laws and regulations.
20. Complainant and the 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

21. The Respondent shall pay a civil penalty in the amount of **THIRTY-EIGHT THOUSAND AND FIVE HUNDRED DOLLARS (\$38,500.00)**, which shall be paid within 30 days from the effective date of this CAFO.
22. The Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, the Respondent shall send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

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

For payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency

Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
**Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency."**

23. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) to each of the following persons at the following addresses:

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

Randy Jackson
RCRD Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

and

Saundi Wilson
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

24. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
25. 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 principal amount not paid within 90 days of the due date.
26. Complainant and the Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. Each undersigned representatives 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 binds that party to this CAFO.

VI. Effective Date

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

THIS SECTION INTENTIONALLY LEFT BLANK

AGREED AND CONSENTED TO:

Docket No.: TSCA-04-2016-2908(b)

Respondent: Wise Alloys, LLC

By:  (Signature) Date: 09/01/2016

Name: RAKESH KAPUR (Typed or Printed)

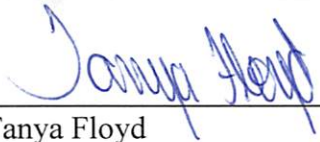
Title: CFO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 09/20/2016

G. Alan Farmer
Director
RCR Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 26th day of September, 2016.

By: 
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for Wise Alloys, LLC – Southern Reclamation Plant, Docket Number: TSCA-04-2016-2908(b), on 9-27-16, and on 9-27-16, served the parties listed below in the manner indicated:

Lucia Mendez (Via EPA Internal Mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Robert Caplan (Via EPA Internal Mail)
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

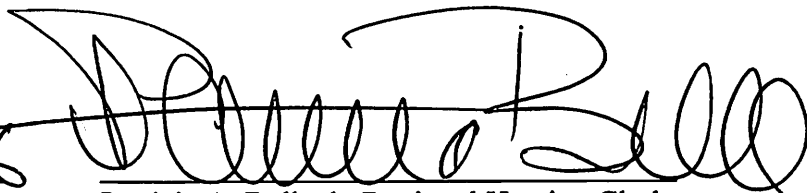
Randy Jackson (Via EPA Internal mail)
Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Mr. John Fehrenbach (Via Certified Mail – Return Receipt Requested)
Winston and Strawn, LLP
1700 K Street, N.W.
Washington, D.C. 20006

Date:

9-27-16



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