

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura J. Berry 9/27/11
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TSCA-01-2011-0119

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

The United Illuminating Company
801 Bridgeport Avenue
Shelton, CT 06484

Total Dollar Amount of Receivable \$ 39,900 Due Date: 10/27/11

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

2011 SEP 27 P 2:56

Reply to: (617) 918-1148

Fax: (617) 918-0148

Mail Code: OES 04-2

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

September 27, 2011

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the matter of The United Illuminating Company, Docket No. TSCA-01-2011-0119*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Elizabeth Barton, Esq.
Marianne Milette, OES, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE REGIONAL ADMINISTRATOR

RECEIVED

SEP 27 P 2:57

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Docket No: TSCA-01-2011-0119

IN THE MATTER OF)

The United Illuminating Company)
801 Bridgeport Avenue)
Shelton, CT 06484)

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 1 ("EPA" or "Region 1") issues this Consent Agreement and Final Order ("CAFO") to The United Illuminating Company ("UI" or "Respondent"), pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondent's liability for alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, as well as the federal regulations promulgated thereunder, "Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions," 40 C.F.R. Part 761.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614.

A. TSCA STATUTORY AND REGULATORY AUTHORITY

2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614.

3. Section 15(1)(B) and (C) of TSCA, 15 U.S.C. § 2614(1)(B) and (C), make it unlawful for any person to fail to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated under that section.

4. The “Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions,” 40 C.F.R. Part 761 (“PCB regulations”) were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

5. The PCB Regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” 40 C.F.R. § 761.1(a).

6. The PCB regulations at 40 C.F.R. § 761.3 define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”

7. Pursuant to 40 C.F.R. § 761.3, "PCB waste" constitutes those PCBs and PCB Items subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.

8. Forty C.F.R. § 761.2 sets forth required concentration assumptions for electrical equipment, including transformers, whose PCB concentration is not otherwise established.

9. The PCB regulations at 40 C.F.R. § 761.3 define a "generator of PCB waste" as "any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part."

10. Forty C.F.R. Part 761, Subpart D ("Subpart D"), sets forth storage and disposal requirements for PCB waste.

11. Any person storing or disposing of PCB waste must do so in accordance with Subpart D. 40 C.F.R. § 761.50(a). The Subpart D requirements pertaining to storage of PCB waste are found at 40 C.F.R. § 761.65. Those requirements apply to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.

12. Pursuant to 40 C.F.R. § 761.65(c)(10), owners or operators of storage facilities shall establish and maintain records, including written annual document logs, as provided in 40 C.F.R. § 761.180.

13. Pursuant to 40 C.F.R. § 761.180(a), "each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s) or one or more PCB

Transformers, or 50 or more PCB Large High or Low Voltage Capacitors” must develop and maintain at the facility a written annual document log of the disposition of PCBs and PCB Items.

14. Forty C.F.R. § 761.180(a)(2) sets forth information that must be included on the written annual document log including, among other things, the name, address, and EPA identification number of the facility; the calendar year covered by the document log; the unique manifest number of every manifest generated by the facility during that calendar year, along with certain information from each manifest; records of telephone calls or other means of verification with commercial storers and disposers of PCB Waste; and the total number by specific type and the total weight in kilograms of PCBs in PCB Articles, PCB Article Containers, PCB Containers, PCB Transformers, and PCB bulk waste.

15. Pursuant to 40 C.F.R. § 761.207, a generator who relinquishes control over PCB wastes, as defined in 40 C.F.R. § 761.3, by transporting or offering to transport PCB waste for commercial offsite storage or offsite disposal shall prepare a manifest on EPA Form 8700-22, specifying for each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

II. GENERAL ALLEGATIONS

16. Respondent is an electric distribution company with a branch located in Shelton, Connecticut and headquarters located in New Haven, Connecticut.

17. Respondent is a “person,” as defined by 40 C.F.R. § 761.3, subject to TSCA and the PCB regulations.

18. Respondent is a “generator of PCB waste,” as defined by 40 C.F.R. § 761.3.

19. Respondent owns and operates facilities that regularly store PCBs and PCB Items and dispose of PCB waste. The PCB Items include transformers.

A. Failure To Create And Maintain Written Annual Document Logs

20. On January 14, 2011, UI notified EPA that it generated, stored, and shipped PCB waste offsite for disposal each year from 2006 through 2009.

21. UI reported to EPA that it generated, stored, and shipped offsite for disposal in 2007 at least 13,150 kilograms of PCB waste, including at least four PCB Transformers.

22. UI reported to EPA that it generated, stored, and shipped offsite for disposal in 2008 at least 36,573 kilograms of PCB waste, including at least ten PCB Transformers.

23. UI reported to EPA that it generated, stored, and shipped offsite for disposal in 2009 at least 19,580 kilograms of PCB waste, including at least two PCB Transformers.

24. UI was required to create and maintain written annual document logs for each calendar year from 2007 through 2009, by no later than July 1 for the previous calendar year.

25. Based on the information submitted by Respondent, UI failed to create and maintain at its facility written annual document logs for 2007, 2008, or 2009 until at least January 14, 2011, in violation of 40 C.F.R. § 761.180(a).

B. Failure To Specify Date Of Removal From Service And Weight of PCB Waste On Manifests

26. On May 12, 2010, UI shipped PCB-contaminated soil offsite for disposal. UI identified this PCB waste on manifest 007196330 JJK but failed to specify the date of removal from service for disposal and the weight in kilograms of the PCB waste.

27. On May 17, 2010, UI shipped PCB-contaminated soil offsite for disposal. UI identified this PCB waste on manifest 007196332 JJK but failed to specify the date of removal from service for disposal and the weight in kilograms of the PCB waste.

28. Based on information submitted by the Connecticut Department of Environmental Protection ("CT DEP"), UI was a generator of PCB waste that transported PCB waste offsite

from its facilities without specifying the date of removal from service for disposal and the weight in kilograms of PCB waste, in violation of 40 C.F.R. § 761.207(a).

III. TERMS OF SETTLEMENT

29. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

30. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in this CAFO, consents to its terms.

31. Respondent hereby waives its right to contest, for purposes of this settlement, any issue of law or fact set forth in this CAFO, as well as its right to appeal the Final Order.

A. PENALTY

32. Pursuant to Section 16 of TSCA, taking into account the penalty assessment criteria of Section 16(a), the facts set forth in this CAFO, and other circumstances as justice may require, EPA determined that it is fair and appropriate to assess a civil penalty in the amount of thirty-nine thousand nine hundred dollars (\$39,900) for the violations alleged in this CAFO.

33. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$39,900 payable to the order of the "Treasurer, United States of America," and referencing the EPA Docket Number of this action (TSCA-01-2011-0119). In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk. The check should be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912.

Interest and late charges, if applicable, shall be paid as specified in Paragraph 34 below.

34. Failure by Respondent to pay the total penalty in full by the due date may subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of the Final Order. 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 costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and load rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year

compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid, in accordance with 31 C.F.R. § 901.9(d).

35. The penalty specified in Paragraph 32 above shall represent a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

B. COMPLIANCE

36. UI certifies that it is now in compliance with 40 C.F.R. §§ 761.180(a) and 761.207(a).

C. GENERAL PROVISIONS

37. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA. It is the responsibility of the Respondent to comply with such laws and regulations, including, but not limited to, the requirements regarding distribution in commerce, set forth at 40 C.F.R. § 761.20; decontamination procedures, set forth at 40 C.F.R. § 761.79; notification of PCB waste activity, set forth at 40 C.F.R. § 761.205; record-keeping requirements, set forth at 40 C.F.R. § 761.180; manifesting requirements, set forth at 40 C.F.R. § 761.207; and unmanifested waste reporting requirements, set forth at 40 C.F.R. § 761.211. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in the CAFO shall be construed to limit the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the


environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

38. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

39. Each party shall bear its own costs and attorneys' fees in connection with the action resolved this CAFO.

40. This CAFO does not constitute a waiver, suspension, or modification of the requirements of TSCA, 15 U.S.C. § 2601 *et seq.*, or any regulations promulgated thereunder.

FOR RESPONDENT:

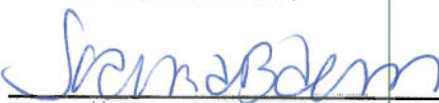


Anthony J. Vallillo
President and Chief Operating Officer
The United Illuminating Company

9/20/11

Date

FOR COMPLAINANT:



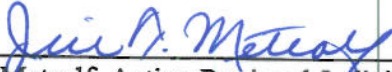
Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

9/20/11

Date

VI. FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective upon filing with the Regional Hearing Clerk.



Jill Metcalf, Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1



Date