



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 17 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Edward Kiessling  
Manager  
Environmental Engineering and Occupational Health Office  
National Aeronautics and Space Administration  
Building 4249 Code AS10  
Marshall Space Flight Center, Alabama 35812-0001

Re: Consent Agreement and Final Order - Docket No. TSCA-04-2014-2905(b)  
NASA Marshall Space Flight Center

Dear Mr. Kiessling:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CA/FO was effective upon filing with the RHC and payment of the civil penalty is to be paid within thirty (30) calendar days of the effective date of the CA/FO.

If you have any questions, please feel free to contact Paula A. Whiting, of my staff, at (404) 562-9277.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

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HEARING CLERK

In the Matter of: )  
)  
NASA Marshall Space Flight Center )  
Huntsville, Alabama 35812 )  
)  
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)  
Respondent. )  
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Docket No. TSCA-04-2014-2905(b)

**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 Recovery Act (RCRA) Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is NASA Marshall Space Flight Center.
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 the Resource Conservation and Recovery Act (RCRA) Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA Division 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 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 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:

Paula A. Whiting  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-9277

## **III. Specific Allegations**

6. Respondent was a user of PCB Items operating in the State of Alabama and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about October 25, 2012, a remedial action was being conducted pursuant to the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) at the Respondent’s facility located at NASA Marshall Space Flight Center, Huntsville, Alabama (NASA facility).

8. On or about October 22, 2012 two roll-off containers containing PCB bulk remediation wastes generated during the CERCLA cleanup were shipped from the NASA facility for disposal to a non-hazardous waste landfill because of a tracking error in the analysis results for the two containers. The tracking error failed to identify that the first roll-off contained bulk PCB remediation wastes with PCB concentrations that exceeded 50 parts per million.
9. On or about October 25, 2012, the two roll-off containers were delivered to Morris Farm Landfill, Permit# 40-08, Hillsboro, Alabama, and placed in the active landfill cell at that time. Morris Farm Landfill, owned and operated by BFI Waste Systems of Alabama, LLC (BFI), is a municipal solid waste landfill and is not permitted to receive hazardous waste.
10. 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii) states that any person disposing off-site of dewatered bulk PCB remediation waste shall do as follows: Bulk PCB remediation wastes with a PCB concentration  $\geq 50$  ppm shall be disposed of in a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA, or a PCB disposal facility approved under this part. As set forth above, Respondent offered for transport a roll-off containing bulk PCB remediation wastes with PCB concentrations  $\geq 50$  ppm for disposal in a Subtitle D Municipal landfill. Therefore, Respondent violated 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii).
11. 40 C.F.R. § 761.207(a)(1) states that a generator who relinquishes control over PCB wastes by transporting, or offering for transport by his own vehicle or by a vehicle owned by another person, PCB waste for commercial offsite storage or off-site disposal shall prepare a manifest on EPA Form 8700-22, and if necessary, a continuation sheet. The generator shall specify 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. According to information obtained by the EPA, Respondent failed to prepare a manifest to the transporter of the PCB waste for the October 25, 2012, shipment of PCB waste from the NASA facility to the Morris Farm Landfill in Hillsboro, Alabama. Therefore, Respondent violated 40 C.F.R. § 761.207(a)(1).

#### **IV. Consent Agreement**

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
13. 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.
14. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
15. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
16. This CAFO constitutes a settlement by 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, 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 EPA, and it is Respondent's responsibility to comply with said laws and regulations.
17. 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**

18. Respondent is assessed a civil penalty of TWENTY-ONE THOUSAND SIX HUNDRED AND SEVENTY-TWO DOLLARS (\$21,672.00), which shall be paid within 30 days from the effective date of this CAFO.
19. 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, 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."**

20. 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;

Paula A. Whiting  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

and

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

21. 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.
22. 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.
23. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
24. This CAFO shall be binding upon the Respondent, its successors and assigns.
25. Each undersigned representative of the parties y 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.

26. 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:** NASA Marshall Space Flight Center  
**Docket No.:** TSCA-04-2014-2905(b)

By: Edward H. Kiessling (Signature) Date: 5/8/14

Name: Edward H. Kiessling (Typed or Printed)

Title: Manager,  
Environmental Eng'g & Occ. Health (Typed or Printed)

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

By: G. Alan Farmer (Signature) Date: 5/21/14  
G. Alan Farmer, Director  
RCRA Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 17 day of June, 2014.

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



**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of NASA Marshall Space Flight Center Docket Number: TSCA-04-2014-2905(b) to the addressees listed below.

via Certified Mail, Return Receipt Requested

Mr. Edward Kiessling  
Manager  
Environmental Engineering and Occupational Health Office  
National Aeronautics and Space Administration  
Building 4249 Code AS10  
Marshall Space Flight Center, Alabama 35812-0001

via EPA's internal mail

Robert Caplan  
Senior Attorney  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

via EPA's internal mail

Tammye Cross  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Date:

6-17-14



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303