



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 28 2018

Ms. Shirley Whitsitt, Esq.
Law Office of Shirley Whitsitt
433 S. Pine Street
Sebring, Florida 33870

SUBJ: Radio Miami International, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2905(b)

Dear Ms. Whitsitt:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above, and in the CAFO, should be noted on any cashier's or certified check submitted for payment of the penalty.

Should you have any questions about this matter, or your compliance status in the future, please contact Michi Kono at (404) 562-9558.

Sincerely,

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

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

Enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

In the Matter of:)
)
Radio Miami International, Inc.) Docket No. TSCA-04-2018-2905(b)
10400 NW 240th Street)
Okeechobee, Florida 34972)
)
)
Respondent.)
_____)

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, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Radio Miami International, Inc.
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 Restoration Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Resource Conservation and Restoration 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 civil penalty in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

5. Respondent is a user of PCB Items operating in the State of Florida and is a "person" as defined in 40 C.F.R. § 761.3.
6. On or about December 28, 2017, an inspection was conducted at Respondent's facility, located at 10400 NW 240th Street, Okeechobee, Florida, by the EPA, to determine compliance with the PCB regulations.
7. During the inspection on December 28, 2017, Respondent had 16 PCB Transformers and 24 PCB Large High Voltage Capacitors in-use.

8. During the inspection on December 28, 2017, Respondent had 5 PCB Transformers and 5 PCB Large High Voltage Capacitors stored on-site for re-use since at least December 1, 2013, in Bay 5 when Respondent purchased the facility.
9. All transformers identified in Paragraphs 7 and 8, contain more than 3 pounds of unknown dielectric fluid with an unknown PCB concentration and an unknown manufacture date.
10. All capacitors identified in Paragraphs 7 and 8, had no manufacture date and some were labeled with a PCB Mark.
11. During the inspection on December 28, 2017, Respondent did not have paperwork associated with PCB Items on-site.
12. 40 C.F.R. § 761.2(a)(3) states that any person must assume that a transformer manufactured prior to July 2, 1979, that contains 1.36 kilograms (3 pounds) or more of fluid other than mineral oil and whose PCB concentration is not established, is a PCB Transformer (i.e., ≥ 500 parts per million). If the date of manufacture and the type of dielectric fluid are unknown, any person must assume the transformer to be a PCB Transformer.
13. 40 C.F.R. § 761.3 defines a PCB Transformer as any transformer that contains ≥ 500 parts per million (ppm) PCBs.
14. 40 C.F.R. § 761.2(a)(4) states that any person must assume that a capacitor manufactured prior to July 2, 1979, whose PCB concentration is not established contains ≥ 500 ppm PCBs. If the date of manufacture is unknown, any person must assume the capacitor contains ≥ 500 ppm PCBs.

15. 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.
16. 40 C.F.R. § 761.3 defines PCB Articles as 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 capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.
17. 40 C.F.R. § 761.3 defines Large High Voltage Capacitors as any capacitor which contains 1.36 kilograms (3 pounds) or more of dielectric fluid and which operates at 2,000 volts (alternating current or direct current) or above.
18. 40 C.F.R. § 761.30(a)(1)(vi)(A) requires that no later than December 28, 1998, all owners of PCB Transformers, including those in storage for reuse, must register their transformers with the EPA’s National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Respondent did not register the PCB Transformers with the EPA as required by December 28, 1998. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.30(a)(1)(vi)(A).
19. 40 C.F.R. § 761.35(a)(2) requires records starting at the time the PCB Article is removed from use or August 28, 1998. The records must indicate: (i) the date the PCB Article was

removed from use or August 28, 1998, if the removal date is not known; and (ii) the projected location and the future use of the PCB Article. During the December 28, 2017, inspection, no records were available for the removal date of the PCB Transformers. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.35(a)(2).

20. 40 C.F.R. § 761.180(a) requires a written annual document log and annual records for anyone that uses or stores at any one time at least 45 kilograms of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors. The log must be prepared by July 1 for the previous calendar year and maintained for three years after PCBs are ceased being used or stored. During the December 28, 2017, inspection, no written annual document log and/or annual records were available nor was any evidence presented that Respondent had kept the required log. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.180(a).

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
22. 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.
23. For the purposes of achieving a resolution by settlement, 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.
24. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.

25. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
26. 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**

27. Respondent is assessed a civil penalty of **TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00)**, which shall be paid within 30 days from the effective date of this CAFO.
28. 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) 425-1819

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
Beneficiary = U.S. Environmental Protection Agency

29. 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;

and

Kris Lippert
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

30. 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.

31. Pursuant to 31 U.S.C. § 3717, the 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.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. Each undersigned representative 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

35. 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: Radio Miami International, Inc.
Docket No.: TSCA-04-2018-2905(b)

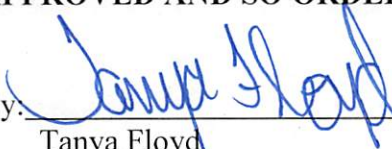
By: Jeffrey R. White (Signature) Date: 8/3/2018
Name: Jeffrey R. White (Typed or Printed)
Title: General Manager (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8/22/18

Carol J. Monell
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 28th day of August, 2018.

By: 

Tanya Floyd
Regional Judicial Officer
EPA Region 4

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 Radio Miami International, Inc., Docket Number: TSCA-04-2018-2905(b), on 8-28-18, and on 8-28-18, served the parties listed below in the manner indicated.

Ms. Shirley Whitsitt, Esq.
Law Office of Shirley Whitsitt
433 S. Pine Street
Sebring, Florida 33870

(Via Certified Mail – Return Receipt Requested)

Michi Kono
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

Robert Caplan
Senior Attorney
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

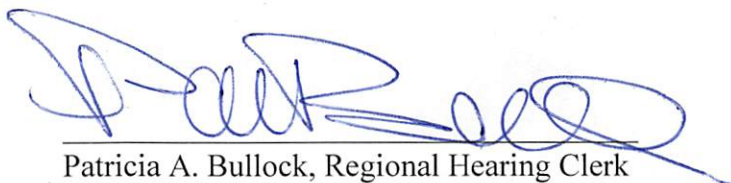
Kris Lippert
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

Date: 8-28-18



Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511