



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

DEC 17 2019

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

Sharon C. Trippany  
Environmental Affairs Specialist  
Alabama Power  
600 N. 18<sup>th</sup> Street/12N-0831  
Birmingham, Alabama 35203

SUBJ: Alabama Power  
Consent Agreement and Final Order  
Docket No. TSCA-04-2019-2900(b)

Dear Ms. Trippany:

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 or your client have any questions about this matter, or your client's compliance status in the future, please contact Kris Lippert at (404)562-8605.

Sincerely,

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

Larry L. Lamberth  
Chief,  
Chemical Safety and Land Enforcement Branch

Enclosure

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

In the Matter of: )

Alabama Power )  
600 N. 18<sup>th</sup> Street/12N-0831 )  
Birmingham, Alabama 35203 )

Docket No. TSCA-04-2019-2900(b)

Respondent. )  
\_\_\_\_\_ )

RECEIVED  
2019 DEC 17 AM 11:16  
OFFICE OF THE ATTORNEY GENERAL  
U.S. ENVIRONMENTAL PROTECTION AGENCY

**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 Enforcement and Compliance Assurance Division of EPA, Region 4, who has been delegated the authority to settle civil administrative penalty proceedings under Section 16(a) of TSCA. Respondent is Alabama Power.
2. 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**

3. 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**

4. Respondent is a user of PCB Items operating in the State of Alabama and is a "person" as defined in 40 C.F.R. § 761.3.
5. On April 16, 2019, the Respondent reported a spill of 5.8 gallons of fluid from a felled pole top PCB transformer during a high wind event containing PCBs at 4,665 parts per million (ppm) to the National Response Center.
6. The actual spill of at least 5 gallons of PCB fluid occurred on April 11, 2019, at 1608 Hayes Circle, Vestavia Hills, Alabama (the site).
7. In response to the PCB spill, the Respondent hired an environmental consultant and a remediation contractor to clean up, remove and dispose the PCB transformer, the spilled PCB oil, and the PCB-contaminated soils at the site, which, under 40 C.F.R. § 761.3, constituted "PCB remediation waste".
8. 40 C.F.R. § 761.3 defines "PCB Transformer" as any transformer that contains  $\geq 500$  ppm PCBs.
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. § 761.3 defines “Disposal” as intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items.  
“Disposal” includes 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.
11. 40 C.F.R. § 761.50(a)(4) states that spills and other uncontrolled discharges of PCBs  $\geq$  50 ppm constitute the disposal of PCBs. Pursuant to 40 C.F.R. § 761.50(b)(3), the PCB remediation waste that resulted from the spill was required to be cleaned up in accordance with 40 C.F.R. § 761.61. The spill from the downed poletop transformer with 4,665 ppm PCBs that occurred on April 11, 2019, was not reported to the NRC until April 16, 2019. Clean up and disposal of the PCB transformer, spilled PCB oil, and PCB-contaminated soil was not initiated until April 16, 2019. Therefore, the EPA alleges that the Respondent disposed of PCBs in violation of 40 C.F.R. § 761.50(a)(4).

#### **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 and legal 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 the EPA and agrees to pay the civil penalty as set forth in this CAFO.
15. 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.

16. 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 the 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 the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable 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 **SIXTEEN THOUSAND TWO HUNDRED AND SIXTY-EIGHT DOLLARS (\$16,268.00)**, which shall be paid within 30 days from the effective date of this CAFO.
19. Respondent shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Respondent's name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Address for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.):

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Delivery Contact Phone Number: (314) 425-1819

If paying by EFT, transfer the payment to:

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

If paying by ACH, remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
REX (Remittance Express): 1-866-234-5681

20. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to 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  
Chemical Safety Section  
Chemical Safety and Land Enforcement Branch  
Enforcement Compliance and Assurance Division

U.S. EPA Region 4  
61 Forsyth Street SW  
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, 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.
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 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.

The remainder of this page is intentionally left blank.

**VI. Effective Date**

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:** Alabama Power  
**Docket No.:** TSCA-04-2019-2900(b)

By: Susan Comensky (Signature) Date: 11/4/19  
Name: Susan Comensky (Typed or Printed)  
Title: Environmental Affairs Vice President (Typed or Printed)

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

By: J. St. Ch Date: 11/27/2019  
for Carol L. Kemker  
Director  
Enforcement Compliance and Assurance Division

**APPROVED AND SO ORDERED** this 16<sup>th</sup> day of December, 2019.

By: Tanya Floyd  
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 Alabama Power, Docket Number: TSCA-04-2019-2900(b), on \_\_\_\_\_, and on \_\_\_\_\_, served the parties listed below in the manner indicated:

Sharon C. Trippany  
Environmental Affairs Specialist  
Alabama Power  
600 N. 18<sup>th</sup> Street/12N-0831  
Birmingham, Alabama

(Via Certified Mail – Return Receipt Requested)

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

(Via EPA Internal Mail)

Kris Lippert  
Chemical Safety Section  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

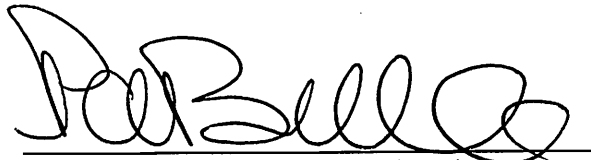
(Via EPA Internal mail)

Quantindra Smith  
Targeting, Data & Measures Office  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA Internal mail)

Date:

12-17-19



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