



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 29 2008

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Robin Phelps
Manager
Bardwell City Utilities
1 Front Street
Bardwell, KY 42023

SUBJ: Bardwell City Utilities
Docket No. TSCA-04-2008-2539(b)

Dear Mr. Phelps:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section 17 of the CAFO, your penalty of \$6,922.70, including interest, is broken down into four payments. The first payment totaling \$1,699.25 is due within 30 days from the effective date of the CAFO. The following three payments must be paid pursuant to the noted schedule in the amounts indicated. Please ensure that the face of each of your cashier's or certified checks include the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Keith Bates at (404) 562- 8992.

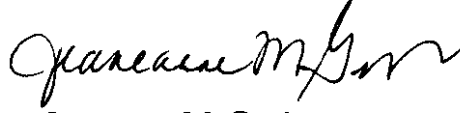
Also enclosed, is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts you on notice of your potential duty to disclose to the

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

Securities and Exchange Commission any environmental enforcement actions taken by EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping tail.

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Bardwell City Utilities)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2008-2539(b)

RECEIVED
ENVIRONMENTAL
2008 JUL 29 PM 2:11
HEALTH AND SAFETY

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 Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Bardwell City Utilities.
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. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. 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 \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Keith Bates
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-8992.

III. Specific Allegations

6. Respondent is a user of Polychlorinated Biphenyl (PCB) Items operating in the Commonwealth of Kentucky and is a "person" as defined in 40 C.F.R. §761.3.
7. On or about February 22, 2007, an inspection was conducted at Respondent's facility located at 1 Front Street in Bardwell, Kentucky to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs.

8. Respondent possessed a T&R transformer, serial number 001443, with a PCB concentration in the dielectric fluid of 607 ppm. A PCB Transformer is defined as a transformer that contains ≥ 500 ppm PCBs. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A), no later than December 28, 1998, all owners of PCB Transformers, including those in storage for reuse, must register their transformers with EPA. Bardwell City Utilities failed to register the above PCB Transformer with EPA as required in 40 C.F.R. § 761.30(a)(1)(vi)(A).
9. Pursuant to 40 C.F.R. § 761.40(a)(2), PCB Transformers shall be marked with a large PCB mark (M_L), as identified in 40 C.F.R. § 761.45(a), at the time of manufacturer, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked. Respondent failed to mark the PCB Transformer noted in paragraph 8 above, as required in 40 C.F.R. § 761.40(a)(2).
10. Respondent possessed the following transformers stored for reuse: Westinghouse – 25 KVA, serial number 4519563, PCB concentration 51 ppm; Wagner – 50 KVA, serial number 5J27787, PCB concentration 87 ppm; T&R – 50 KVA, serial number 011601, PCB concentration 144 ppm; Westinghouse – 50 KVA, serial number 55K9759, PCB concentration 201 ppm; and General Electric – 50 KVA, serial number D431518-59P – 50 KVA, PCB concentration 88 ppm. Pursuant to 40 C.F.R. § 761.35, the owner or operator of a PCB Article may store it for reuse in an area which is not designed, constructed and operated in compliance with 40 C.F.R. § 761.65(b), for no more than five years if the owner or operator follows all use and marking requirements and maintains records starting at the time the PCB Article is removed from use. The records must indicate the date the PCB Article was removed from use, the projected location, the future use and, if applicable, the date the PCB article is scheduled for repair or servicing.

A PCB Article is defined as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. Respondent failed to include in their storage for reuse records the projected location and future use of five PCB Articles stored for reuse as required in 40 C.F.R. § 761.35(a)(2).

IV. Consent Agreement

11. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
12. 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.
13. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
14. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
15. 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.
16. 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

17. Respondent is assessed a civil penalty of SIX THOUSAND NINE HUNDRED TWENTY TWO Dollars and SEVENTY Cents (\$6,922.70), which is to be paid in four payments, the first due within thirty (30) days of the effective date of this CAFO. The total penalty amount is based on a penalty of \$6,797.00 plus interest of \$125.70. Respondent shall make payments in accordance with the following schedule.

<u>Payment Due Date</u>	<u>Payment Amount Due</u>
Within 30 days of filing of CAFO	\$1,699.25
By December 31, 2008	\$1,762.10
By March 30, 2009	\$1,741.15
By June 30, 2009	\$1,720.20

18. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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 mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

19. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

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

Keith Bates
PCBs and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

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

20. 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.
21. 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.

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

25. 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: Bardwell City Utilities
Docket No.: TSCA-04-2008-2539(b)

By: Philip D. King (Signature) Date: 7/14/08
 Name: Philip D. King (Typed or Printed)
 Title: Mayor (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol L. Kamber for Date: 7/23/08
 Beverly H. Banister
 Director
 Air, Pesticides and Toxics
 Management Division
 61 Forsyth Street
 Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29th day of July, 2008.

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: Franklin Electric Plant Board, Docket Number: TSCA-04-2008-2539(b), to the addressees listed below.

Mr. Robin Phelps
Manager
Bardwell City Utilities
1 Front Street
Bardwell, KY 42023

(via Certified Mail, Return Receipt Requested)

Keith Bates
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

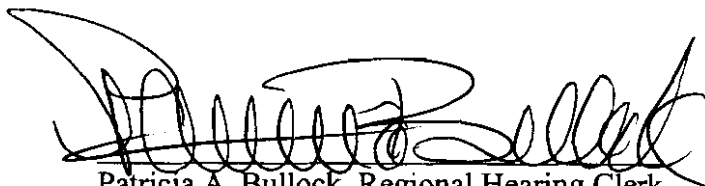
(via EPA's internal mail)

Robert Caplan, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Date:

7-29-08



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 7/28/08
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Bardwell City Utilities
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ ~~1000~~ 16922.76
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2008 2539(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|