

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)

Kaiser Aircraft Industries, Inc.)
1943 50th Street, North)
Birmingham, Alabama 35210)

Docket No. TSCA-04-2020-3200(b)

Respondent.)
_____)

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL
2020 MAR 23 AM 9:22
HEARING CLERK

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 Kaiser Aircraft Industries, Inc.
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 the 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 or about July 2, 2019, the Alabama Department of Environmental Management conducted an inspection at the Respondent's facility located at 1943 50th Street, North, Birmingham, Alabama, to determine compliance with the PCB regulations.
6. During the inspection, areas of the epoxy-coated concrete floor beneath two PCB Transformers were observed to be stained indicating that there appeared to have been leaks and/or spills from these transformers including (1) the General Electric Pyranol Transformer with serial number 74147128; and (2) the General Electric Pyranol Transformer with serial number 7147129.
7. On January 13, 2020, the EPA issued a Show Cause Letter to Respondent advising the company that the apparent leaks and spills from the two PCB Transformers may have constituted a PCB disposal violation pursuant to the PCB regulations and offered an opportunity to meet with the EPA to discuss the apparent violations.

8. In response to the Show Cause Letter, Respondent sampled the apparent spill areas on January 24, 2020, and confirmed the presence of PCBs on the floor. On or about January 24, 2020, Respondent cleaned up the PCB spills underneath both PCB Transformers.
9. 40 C.F.R. § 761.3 defines “PCB Transformer” as any transformer that contains ≥ 500 ppm PCBs.
10. 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.
11. 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.
12. 40 C.F.R. § 761.50(a)(4) states that spills and other uncontrolled discharges of PCBs ≥ 50 ppm constitute the disposal of PCBs. At the time of the inspection, the floor underneath the PCB Transformers described above was observed to be stained with PCB fluid. Sampling conducted by the Respondent confirmed the presence of PCB fluids on the floor. Therefore, the EPA alleges that the Respondent disposed of PCBs in violation of 40 C.F.R. § 761.50(a)(4).

IV. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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

19. Respondent is assessed a civil penalty of **TWO THOUSAND AND SIXTY-NINE DOLLARS (\$2,069.00)**, which shall be paid within 30 days from the effective date of this CAFO.
20. 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:

Kaiser Aircraft Industries, Inc.
Docket No.: TSCA-04-2020-3200(b)

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

21. 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.

22. 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.
23. 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.
24. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
25. This CAFO shall be binding upon the Respondent, its successors and assigns.
26. 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


27. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The forgoing Consent Agreement In the Matter of Kaiser Aircraft Industries, Inc., Docket Number TSCA-04-2020-3200(b) Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date 3-10-2020
Printed Name: DORIS SEWELL
Title: CHIEF EXECUTIVE OFFICER
Address: 1943 50th St. N
Birmingham, AL 35212

The forgoing Consent Agreement In the Matter of **Kaiser Aircraft Industries, Inc.**, Docket Number **TSCA-04-2020-3200(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

Date: 03/17/2020



Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 4

In the Matter of:

Kaiser Aircraft Industries, Inc.

Respondent.

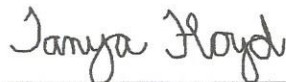
Docket No. TSCA-04-2020-3200(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 23rd day of March, 2020.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the **Matter of Kaiser Aircraft Industries, Docket No. TSCA-04-2020-3200(b)**, were filed and copies of the same were mailed to the parties as indicated below.

Via Certified mail, Return Receipt Requested:

Jay Mather
Environmental Management Corporation
Kaiser Aircraft Industries, Inc.
1943 50th Street, North
Birmingham, Alabama 35210

Via EPA's internal email:

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
lippert.kris@epa.gov

Lynda Crum
Associate Regional Counsel
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
crum.lynda@epa.gov

Quantindra Smith
Targeting, Data & Measures Office
Enforcement Compliance and Assurance Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
Smith.quantindra@epa.gov

3-23-20

DATE



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