



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

ECR-17J

SENT BY ELECTRONIC MAIL

Mr. Mark O'Day
President
Brainerd Public Utilities Commission
8027 Highland Scenic Road
Baxter, MN 56425

Re: Consent Agreement and Final Order
Brainerd Public Utilities Commission **TSCA-05-2019-0017**

Dear Mr. O'Day:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order (CAFO) which resolves the United States Environmental Protection Agency, Region 5's (EPA's) administrative enforcement action against the Brainerd Public Utilities Commission for alleged violations of Section 15 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2614.

Payment of the agreed upon penalty of seven-thousand eight-hundred seventy-four dollars and ten cents (\$7,874.10) is due within thirty (30) days of the effective date of the CAFO, which was September 30, 2019. Please send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must include Respondent's name (Brainerd Public Utilities Commission) and the docket number of the enclosed CAFO.

You also must send notice of payment of the penalty to the following addresses:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Brainerd Public Utilities Commission)
Brainerd, Minnesota,)
)
Respondent.)
_____)

Docket No. TSCA-05-2019-0017

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.


3. Respondent is the Brainerd Public Utilities Commission ("BPU"), a department within the municipal government of the City of Brainerd, Minnesota, with a place of business at 8027 Highland Scenic Road, Brainerd, Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.



Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(e), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), required EPA to promulgate regulations that prescribed methods for the disposal of polychlorinated biphenyls (PCBs), and that required PCBs to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use or disposal or with respect to any combination of such activities. The Polychlorinated Biphenyls Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Federal Register [Fed. Reg.] 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (PCB regulations) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB regulations were subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. The PCB regulations at 40 C.F.R. 761.3 define the term "person" to include any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

11. The PCB regulations define the term "PCB Article" to mean 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, *inter alia*, transformers.

12. The PCB regulations define the term "PCB Item" to mean, *inter alia*, any PCB Article or PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

13. The PCB regulations define the term "PCB Waste" to include those PCBs and PCB Items that are subject to the disposal requirements of the PCB regulations at 40 C.F.R Part 761, subpart D.

14. The PCB regulations at 40 C.F.R Part 761, subpart D, apply to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.

15. The PCB regulations at 40 C.F.R. § 761.65(a)(1) require that any PCB waste shall be disposed of as required by 40 C.F.R. Part 761, subpart D, within one year from the date it was determined to be PCB waste and the decision was made to dispose of it. The regulations further provide that this date is the date of removal from service for disposal and the point at which the one-year time frame for disposal begins.

16. The PCB regulations at 40 C.F.R. § 761.205(c)(2) require that all generators of PCB waste who are subject to the storage unit requirements of 40 C.F.R. § 761.65(b) or the storage container requirements of 40 C.F.R. § 761.65(c)(7) shall notify EPA as a generator of PCB waste by filing form 7710-53 with EPA prior to engaging in PCB waste handling activities.

Factual Allegations and Alleged Violations

17. At all times relevant to this CAFO, BPU provided electrical power, water, and wastewater treatment within the city limits of Brainerd, Minnesota, and operated and managed public utilities owned and operated within the City of Brainerd, Minnesota. By city charter, the

City of Brainerd authorized BPU to control, operate and manage the water works plant and business, the electric light plant and business, and all other public utilities owned by and operated within the City of Brainerd, and to “institute, prosecute and defend, in the name of the City of Brainerd, all actions which they may deem proper to carry out and enforce their authority...”

18. Respondent is the owner and operator of the facility at 8027 Highland Scenic Road, Brainerd, Minnesota.

19. Respondent is a “person” as defined at 40 C.F.R. § 761.3 and is subject to the requirements and prohibitions set forth at 40 C.F.R. Part 761.

20. On August 18, 2016, a representative of the Minnesota Pollution Control Agency (MPCA) inspected the BPU facility located at 8027 Highland Scenic Road, Brainerd, Minnesota.

21. During the August 18, 2016 inspection of the BPU facility, the MPCA inspector examined records concerning a transformer with serial number C122127 at the BPU facility.

22. According to the records examined by the MPCA inspector, transformer No. C122127 contained PCBs at a concentration of 100 parts per million (ppm).

23. Transformer No. C122127 was a “PCB Article” and a “PCB Item” as defined at 40 C.F.R. § 761.3.

24. Transformer No. C122127 was “PCB Waste” as defined at 40 C.F.R. 761.3.

25. During the August 18, 2016 inspection of the BPU facility, the MPCA inspector examined records concerning a transformer with serial number 67E21622 at the BPU facility.

26. According to records provided to the MPCA inspector by BPU, Transformer No. 67E21622 contained PCBs at a concentration of 239 ppm.

27. Transformer No. 67E21622 was a "PCB Article" and a "PCB Item" as defined at 40 C.F.R. § 761.3.

28. Transformer No. 67E21622 was "PCB Waste" as defined at 40 C.F.R. 761.3.

Alleged Violations

29. On August 25, 2014, Respondent removed Transformer No. C122127 from service and placed it into storage for disposal.

30. Respondent was required to remove Transformer No. C122127 from storage and dispose of it within one year, or no later than August 25, 2015.

31. Respondent failed to remove Transformer No. C122127 from storage and dispose of it until January 28, 2016.

32. Respondent's failure to dispose of Transformer No. C122127 within one year from the date when it was first placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

33. On September 18, 2015, Respondent removed Transformer No. 67E21622 from service, and began storing Transformer No. 67E21622 for disposal.

34. Respondent removed Transformer No. 67E21622 from storage and disposed of it on or about June 14, 2016.

35. Transformer No. 67E21622 was subject to the storage unit requirements of 40 C.F.R. § 761.65(b).

36. Respondent was a generator of PCB waste and was subject to the requirements of 40 C.F.R. § 761.65(b).

37. Respondent was required to notify EPA as a generator of PCB waste by filing form 7710-53 prior to commencing storage of Transformer No. 67E21622 for disposal.

38. As of the August 18, 2016 inspection of the BPU facility, Respondent had not notified EPA as a generator by filing form 7710-53.

39. Respondent submitted its notification of PCB activity on August 7, 2019.

40. Respondent's failure to notify EPA as a generator by filing form 7710-53 prior to commencing storage of Transformer No. 67E21622 for disposal on September 18, 2015, constitutes a violation of 40 C.F.R. § 761.205(c)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

41. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA.

42. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is seven-thousand eight-hundred seventy-four dollars and ten cents (\$7,874.10). In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and such other matters as justice may require. In analyzing the facts and circumstances of this case in consideration of those statutory criteria, Complainant utilized the "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990.

43. Within thirty (30) days after the effective date of this CAFO, Respondent must pay a civil penalty in the amount of \$7,874.10 for the TSCA violations alleged in this CAFO by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

44. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kenneth Zolnierczyk (ECR-17J)
RCRA Compliance Section 1
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

James Cha (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not pay the civil penalty in a timely fashion, EPA may refer this matter to the Attorney General of the United States, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent also must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cha.james@epa.gov (for Complainant), and thawkinson@bpu.org (for Respondent).

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

50. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

51. This CAFO does not affect Respondent's responsibility to comply with TSCA and the PCB regulations, and other applicable federal, state and local laws.

52. Respondent certifies that it currently is complying with TSCA and the PCB regulations.

53. The terms of this CAFO bind Respondent, and its successors and assigns.

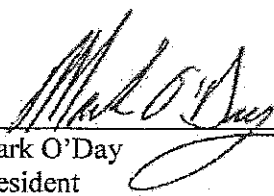
54. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney's fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

City of Brainerd Public Utilities Commission, Respondent

9/24/2019
Date



Mark O'Day
President
Brainerd Public Utilities Commission

United States Environmental Protection Agency, Complainant

9-27-19
Date

for Sara Baunon

Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division

In the Matter of: Brainerd Public Utilities Commission
Docket No.

TSCA-05-2019-0017

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/27/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of:
Brainerd Public Utilities Commission
Docket No. TSCA-05-2019-0017

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Decree and Final Order**, which was filed on September 30, 2019, to the following addresses:

Copy by email to
Respondent:

Trent Hawkinson
Brainerd Public Utilities Commission
Hawkinson THawkinson@bpu.org

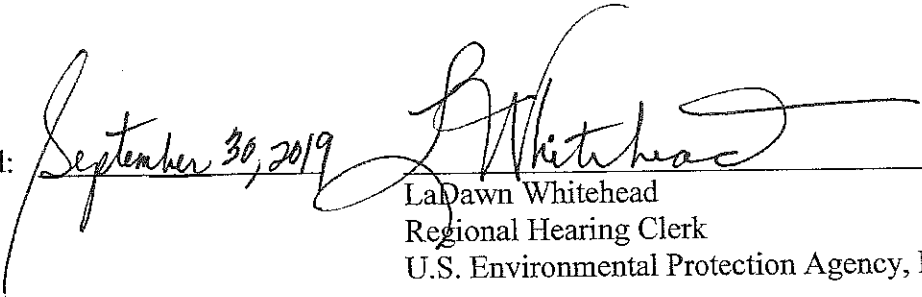
Copy by email to
Attorney for Complainant

Kevin Chow
cha.james@epa.gov

Copy by email to
Enforcement Officer

Kenneth Zolnierczyk
zolnierczyk.kenneth@epa.gov

Dated: September 30, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5