



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

SEP 25 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Ford Little, Esq.
Woolf, McClane, Bright, Allen & Carpenter, PLLC
Post Office Box 900
Knoxville, Tennessee 37901-0900

SUBJ: Merit Construction, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2908(b)

Dear Mr. Little:

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 Robert Caplan at (404) 562-9520, or Kris Lippert at (404)562-8605.

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

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

2018 SEP 25 PM 2:42

HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Merit Construction, Inc.)
10435 Dutchtown Road)
Knoxville, Tennessee 37932)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2018-2908(b)

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 Merit Construction, 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 "person" as defined in 40 C.F.R. § 761.3.
6. In or about 2014, the Respondent entered into a contract with the State of Tennessee Department of Education and the Tennessee Department of General Services Real Estate Asset Management Division (TN DGS) to conduct certain activities at the Tennessee School for the Deaf (the School), located at 2725 Island Home Boulevard, Knoxville,

Tennessee 37920, in connection with a demolition, renovation and construction project (“project”) at the School.

7. In turn, the Respondent entered into a subcontract on or about June 16, 2014, with Bass Services, a licensed Tennessee electrical subcontractor, under which Bass Services performed certain project electrical work at the School.
8. During the course of Bass Service’s work at the School, in or around 2014-2017, a decision was made by Respondent and Bass Services, under the management and oversight of the project by TN DGS, to allow Bass Services to remove a 240-gallon PCB Transformer (Askarel Standard Transformer, Serial #MET-2256) that had been located and/or stored in the area adjacent to Akin Health and P.E. Building. Respondent has asserted that prior to the time this decision was made, Respondent understood, based on certain representations made by one or more other parties involved in the project at the School, that the transformer had been tested at some time in the past and shown to have no PCBs. Respondent also has asserted that the contracts between it and TN DGS included provisions indicating that prior to entering the contract, an investigation had been conducted and that no hazardous materials were expected to be on-site, but should any be encountered by Respondent or other contractors, the owner of the facility should be contacted and the owner would remove the materials.
9. Based on the decision to allow Bass Services to remove the transformer from the School, Bass Services transported the transformer to its facility formerly located at 531 N Sixth Avenue, Knoxville, Tennessee where it was stored on a gravel parking lot that was not secure from access to trespassers, and that did not meet the storage requirements for out of service PCB items destined for disposal.

10. On February 17, 2017, the Tennessee Department of Environment and Conservation (TDEC) inspected the Bass Services facility at 531 N Sixth Avenue, Knoxville, Tennessee, in response to having been alerted to the presence of a PCB Transformer at the facility. During the inspection, TDEC's inspectors observed a PCB Transformer (Serial #MET-2256) sitting in the gravel parking lot.
11. An affidavit obtained by the Respondent from the president of Bass Services, dated March 23, 2017, confirmed that the PCB Transformer located at the Bass Services facility had been removed by Bass Services from the School during the work that Bass Services was performing under subcontract with the Respondent. In response to the transformer having been removed from the School, the TN DGS hired an environmental contractor who removed and disposed of the transformer on May 15, 2017.
12. 40 C.F.R. § 761.3 defines a "PCB Transformer" as any transformer that contains ≥ 500 parts per million (ppm) PCBs. Results of sampling of the oil in the transformer by TCI of Alabama, LLC (TCI) in May 2017, showed that the oil contained 600,000 ppm PCBs. Therefore, the transformer was confirmed to be a PCB Transformer.
13. The nameplate on the transformer that Bass Services removed from the School stated that it was an "Askarel" transformer. Askarel is the name of a PCB oil that was used in PCB transformers by several manufacturers until the manufacturing of PCB transformers was banned in the late 1970's pursuant to the PCB regulations. Additionally, the nameplate on the Askarel transformer removed by Bass Services did not have the date of manufacture of the transformer. Pursuant to 40 C.F.R. § 761.2, if the date of manufacture of a transformer is not known, one must assume that it is a PCB transformer unless/until it has been tested and determined not to be a PCB transformer.

14. Prior to, and at the time the decision was made to allow Bass Services to remove the transformer, an analytical sampling report with the purported negative results for PCBs could not be located and was not provided to the Respondent. To date, no such report has been provided to the EPA by the Respondent or anyone else. Because the transformer was marked "Askarel" indicating it was a PCB transformer, and because the date of manufacture was not on the nameplate, Respondent was required to assume that the transformer was a PCB Transformer, such that it should not have been removed, transported or disposed as a non-PCB transformer in the absence of valid sampling data showing that it was not a PCB Transformer.
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 Waste" as those PCBs and PCB Items that are subject to the disposal requirements found in 40 C.F.R. Part 761, Subpart D.
17. Pursuant to 40 C.F.R. § 761.3, "Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of Part 761, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of Subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of Subpart D of this part.
18. Pursuant to 40 C.F.R. § 761.3, "Transporter of PCB waste" means for purposes of 40 C.F.R. Part 761, Subpart K, any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for purposes other than consolidation by a generator.

19. 40 C.F.R. § 761.202(b)(2)(i) prohibits a transporter from transporting PCB waste without first having received an EPA identification number from EPA.
20. Pursuant to 40 C.F.R. § 761.202(b)(1)(ii), after June 4, 1990, a generator of PCB waste is prohibited from offering PCB waste to any transporter, disposer, or commercial storer of PCB waste who has not received an EPA identification number.
21. Respondent, in its capacity as a generator of PCB waste, as those terms are defined in 40 C.F.R. § 761.3, offered and/or allowed Bass Services to take and to transport and dispose of the PCB Transformer, a PCB waste, at a time when Bass Services did not have an EPA identification number. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.202(b)(1)(ii).

IV. Consent Agreement

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
23. 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.
24. 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.
25. 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.
26. 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.

27. 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

28. Respondent is assessed a civil penalty of **SEVEN THOUSAND FOUR HUNDRED AND SEVENTY-FIVE DOLLARS (\$7,475.00)**, which shall be paid within 30 days from the effective date of this CAFO.
29. 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

30. 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.

31. 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.
32. 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.

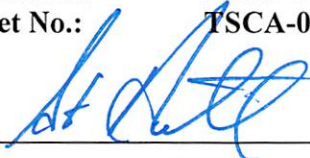
- 33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 34. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 35. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date

- 36. 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: Merit Construction, Inc.
Docket No.: TSCA-04-2018-2908(b)

By:  (Signature) Date: 9/20/2018

Name: STEVE HEATHERLY (Typed or Printed)

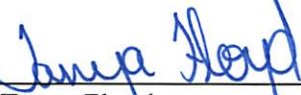
Title: SR. VICE PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 9/25/18

Susan Hansen
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 25th day of September, 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 Merit Construction, Inc., Docket Number: TSCA-04-2018-2908(b), on 9-25-18, and on 9-25-18, served the parties listed below in the manner indicated:

J. Ford Little, Esq.
Woolf, McClane, Bright, Allen & Carpenter, PLLC
Post Office Box 900
Knoxville, Tennessee 37901-0900

(Via Certified Mail - Return Receipt Requested)

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

(Via EPA Internal Mail)

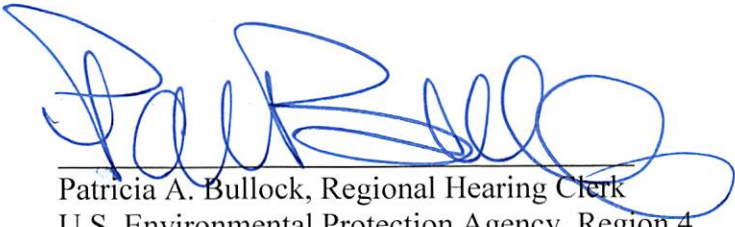
Kris Lippert
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(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 30303-8960

(Via EPA Internal mail)

Date: 9-25-18


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