



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

December 14, 2020

VIA ELECTRONIC MAIL

Mr. Scott Garth
Owner
Morrissey Drive Self Storage, LLC
903 Morrissey Drive
Bloomington, Illinois 61701
sagarth@mediacombb.net

Re: Consent Agreement and Final Order
Morrissey Drive Self Storage LLC
Docket No: **TSCA-05-2021-0002**

Dear Mr. Garth:

Attached please find a copy of the signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed with the Regional Hearing Clerk on December 14, 2020.

Please pay the civil penalty in the amount of \$2,500 in the manner prescribed in paragraphs 31 through 33 of the CAFO, and in the comment or description field of the electronic funds transfer state the case title and the docket number TSCA-05-2021-0002. Your payment is due within thirty (30) calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Ken Zolnierczyk, of my staff, at 312-353-9687.

Sincerely,

MICHAEL
CUNNINGHAM

Digitally signed by
MICHAEL CUNNINGHAM
Date: 2020.11.09
13:40:05 -06'00'

Michael Cunningham, Chief
RCRA Compliance Section 1

Attachment

cc: Phillip R. Van Ness, Webber & Thies, PC (pvanness@webberthies.com) w/attachment
James Jennings, Illinois EPA (james.m.jennings@illinois.gov) w/attachment

5. 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”). *See* 40 C.F.R. § 22.13(b).

6. 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.

7. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

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

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and under 40 C.F.R. § 22.15(c); its right to appellate review under Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. The Polychlorinated Biphenyls (“PCBs”) Disposal and Marking regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use

regulations (“PCB rule”) were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the Disposal and Marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

11. PCB means any chemical substance limited to the biphenyl molecule that has been chlorinated to varying degrees, or any combination of substances containing such substance. 40 C.F.R. § 761.3.

12. A transformer that contains greater than or equal to 500 parts per million (ppm) PCBs is a “PCB Transformer” as defined in 40 C.F.R. § 761.3.

13. PCB waste(s) means those PCBs and PCB Items that are subject to the disposal requirements of subpart D of 40 C.F.R. § 761.

14. The Regulation at 40 CFR § 761.65(a)(1) requires that any PCB waste be disposed of as required by subpart D of this part within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it.

15. Under 40 C.F.R. § 761.3, a person is defined as any natural or judicial person including any individual, corporation, partnership, or association.

16. Section 15(1) of TSCA, 15 U.S.C. § 2615(1) provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605(e). *See also*, 40 C.F.R. § 761.1(d).

17. The EPA Administrator may assess a civil penalty of up to \$38,892 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614, that occurred after November 2, 2015 and assessed after January 15, 2018, pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and 40 C.F.R. Part 19.

General Factual Allegations

18. Respondent is a person as defined at 40 C.F.R. § 761.3.
19. Respondent is the owner of the facility at 903 Morrissey Dr, Bloomington, IL 61701 (Facility).
20. On June 23, 2016, an Illinois EPA inspector performed a PCB inspection of the Facility.
21. At the time of the inspection, at the Facility Respondent owned one out-of-service transformer nameplated as containing 300 gallons of Pyranol, a type of PCB [the Transformer]. Although out of service, the said the Transformer remained on-line [*i.e.*, was still connected to the electrical power grid]. Respondent certifies that it acquired Transformer in the course of purchasing the Facility, did not use the Transformer, had no present intention to re-use the Transformer, and, at the time of the inspection, had no definite plan to dispose of the Transformer.
22. On June 23, 2016, the inspector collected a wipe sample of fluid from two drain ports [one upper and one lower] of the Transformer. The inspector observed visible stains at the upper and lower drain ports, a “drip” of oil observed hanging below the upper drain port plug, and a visible stain on a metal bar below it. The Transformer was observed as specified to contain 300 gallons of PCB oil and was located within a concrete containment structure providing containment volume of 389 gallons.
23. The inspector collected wipe sample was collected at the upper drain port and was analyzed and found to contain PCBs of 190,000 ug/wipe; and collected another wipe sample at the lower drain port. The samples were analyzed and found to contain PCBs of 110,000 ug/wipe.

24. The Transformer was left at the Facility at the time of Respondent's purchase of the Facility, and is a PCB transformer containing greater than 500 ppm PCB.

25. The Transformer was a PCB Article, PCB Item, and PCB Transformer under the PCB rule.

26. As set forth above, the regulation at 40 CFR § 761.65(a)(1) requires that any PCB waste be disposed of as required by subpart D of this part within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it.

27. On June 23, 2016, Respondent informed the inspector that the Transformer had been out of service since prior to his acquisition of the Facility, and that he had no present plans to dispose of the Transformer, but stated that he planned to dispose of the Transformer "once the property begins to make a profit."

28. Respondent denies that Respondent's failure to dispose of the PCB transformer within one year of the date first placed in storage constitutes a violation of 40 CFR § 761.65(a)(1) and Section 15 of TSCA, 15 U.S.C. § 2614; however, Respondent acknowledges such disposal and destruction occurred more than one year following the inspection.

Allegation of Violation

29. Based on the foregoing, EPA alleges that in violation of the regulation at 40 CFR § 761.65(a)(1), the Transformer was a PCB waste and was not disposed of as required by subpart D within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it.

Civil Penalty

30. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator to take into account the nature, circumstances, extent, and gravity of the

violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, when determining the amount of civil penalty for violations of TSCA.

31. Based upon the facts alleged in this CAFO, the factors listed in Section 16(a)(2)(B) of TSCA, EPA's PCB Penalty Policy (April 9, 1990), and Respondent's good faith and cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$ 2,500.

32. Respondent agrees to pay a \$2,500 civil penalty for the TSCA violations alleged herein, within 30 days after the effective date of 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

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), Respondent must send the check to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO and the billing document number.

33. A transmittal letter, stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Ken Zolnierczyk (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Andre Daugavietis (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

35. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring a civil action to collect any unpaid portion of the penalty with interest under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

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

General Provisions

37. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: daugavietis.andre@epa.gov (for Complainant) and sagarth@mediacombb.net (for Respondent). *See* 40 C.F.R. §§ 22.5-6. In addition, EPA will promptly provide service of this CAFO, once fully executed, and any notifications, civil actions or correspondence thereunder, to Respondent's legal counsel [pvanness@webberthies.com].

38. Respondent's full compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

39. This CAFO does not affect the rights of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law other than those articulated in this CAFO.

40. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state, or local laws and permits.

41. Respondent certifies that it is complying with TSCA and its implementing regulations at the Facility.

42. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and EPA's PCB Penalty Policy.

43. The terms of this CAFO bind Respondent and its officers, directors, agents, servants, employees, and successors or assigns.

44. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

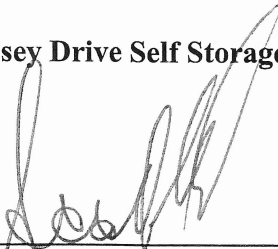
45. Each party agrees to bear its own costs and attorneys' fees in this action.

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

47. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of:
Morrissey Drive Self Storage LLC
Docket No. TSCA-05-2021-0002

Morrissey Drive Self Storage LLC, Respondent



Scott Garth
Owner
Morrissey Drive Self Storage LLC

2-10-20
Date

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.11.16
10:28:24 -06'00'

Michael D. Harris
Director
Enforcement and Compliance Division
United States Environmental Protection Agency, Region 5

Date

In the Matter of:

Morrissey Drive Self Storage LLC

Docket No. TCSA-05-2021-0002

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.

By: ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.12.14
11:03:06 -06'00' Date: _____
Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of Morrissey Drive Self Storage, LLC
PCB3601814251
Docket No. TSCA-05-2021-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number TSCA-05-2021-0002 which was filed on December 14, 2020 in the following manner to the following addresses:

Copy by email to
Respondent:

Scott Garth
sagarth@mediacombb.net

Copy by email to
Counsel for Respondent:

Phil Van Ness
pvanness@webberthies.com

Copy by email to
Attorney for Complainant:

Andre Daugavietis
Daugavietis.Andre@epa.gov

Copy by email to
Enforcement Officer:

Kenneth Zolnierczyk
zolnierczyk.kenneth@epa.gov

Copy by email to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Copy by E-mail to the Illinois
Environmental Protection Agency:

James Jennings
James.m.jennings@illinois.gov

Dated: _____

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD
Date: 2020.12.14 15:13:18 -06'00'

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