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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. TSCA-10-2010-0198
)	
CITY OF KETCHIKAN,)	
KETCHIKAN PUBLIC UTILITIES,)	CONSENT AGREEMENT AND
Ketchikan, Alaska,)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Ketchikan (“Respondent”) agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA, together with the specific provisions of TSCA and its implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. In August 2007, Respondent removed approximately 5 gallons of liquid from a transformer, and incinerated this liquid at Respondent’s facility at 1065 Fair Street, Ketchikan, Alaska.

3.2. Subsequent to incineration of the liquid, Respondent provided EPA with information indicating that the liquid had been tested in 1990, and was found to contain polychlorinated biphenyls (“PCBs”) at a concentration of 198 parts per million (“ppm”).

3.3. According to 40 C.F.R. § 761.60(a), an incinerator that is used to dispose of liquid PCBs at a concentration of greater than or equal to 50 ppm must comply with 40 C.F.R. § 761.70. 40 C.F.R. § 761.60(a) is a rule promulgated under TSCA Section 6, 15 U.S.C. § 2605.

3.4. The incinerator used by Respondent to dispose of liquid PCBs at a concentration greater than 50 ppm had not been approved by EPA under 40 C.F.R. § 761.70 for the incineration of these PCBs.

3.5. Section 15 of TSCA makes it unlawful for any person to “fail or refuse to comply with . . . any rule promulgated or order issued under section 5 or 6.” 15 U.S.C. § 2614(1).

3.6. Respondent is a “person” within the meaning of 40 C.F.R. § 761.3.

3.7. Respondent’s disposal by incineration of fluid containing PCBs at a concentration of greater than 50 ppm failed to comply with the requirements of 40 C.F.R. § 761.60(a). This

failure is a violation of Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and subjects Respondent to civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent admits the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent consents to the assessment and payment of a civil penalty in the amount of two thousand nine hundred dollars (\$2900). This penalty amount has been arrived at through an application of the factors set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). The calculated penalty amount is also in accord with the applicable penalty policy of EPA.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tristen Gardner
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE - 084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty will not be subject to review.

4.8. The penalty described in Paragraph 4.3 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

08/27/2010

FOR RESPONDENT:

Lloyd Gossman

Signature

Print Name: LLOYD GOSSMAN

Title: SAFETY COORDINATOR

DATED:

9/10/2010

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

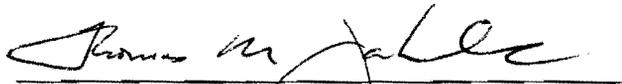
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order.

5.2. It is hereby ordered that Ketchikan Public Utilities ("Respondent") comply with the terms of the Consent Agreement executed by the United States Environmental Protection Agency ("EPA") and Respondent in this matter. This compliance obligation is effective upon the date of filing of the Consent Agreement along with this Final Order.

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violation alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 13th day of September, 2010.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of the City of Ketchikan, DOCKET NO.: TSCA-10-2010-0198** was filed with the Regional Hearing Clerk on Sept. 13, 2010.

On Sept. 13, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Jessica A. Barkas, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Sept. 13, 2010, to:

Lloyd Gossman
Safety Coordinator
City of Ketchikan
334 Front Street
Ketchikan, Alaska 99901

DATED this 13th day of Sept. 2010.

Sharon Eng

Signature
Print Name: Sharon Eng
Regional Hearing Clerk
EPA Region 10