



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

AUG 01 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Doris Sewell
President
Kaiser Aircraft Industries, Inc.
1943 50th Street North
Birmingham, Alabama 35212

SUBJ: Kaiser Aircraft Industries, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2017-2900(b)

Dear Ms. Sewell:

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.

If you have any questions or concerns, please contact William Kappler, of my staff, at (404) 562-8498.

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:

Kaiser Aircraft Industries, Inc.
1943 50th Street North
Birmingham, Alabama 35212

Respondent.

)
)
) Docket No. TSCA-04-2017-2900(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 Kaiser Aircraft Industries, Inc. (Kaiser).
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 user of PCB Items operating in the State of Alabama and is a "person" as defined in 40 C.F.R. § 761.3.
6. On or about April 4, 2016, an authorized representative of EPA conducted an inspection at Respondent's facility located at 1943 50th Street North, Birmingham, Alabama, to determine compliance with the PCB regulations.
7. During the April 4, 2016 inspection, the inspector observed a GE Pyranol PCB transformer (serial number 7147125) located in substation M-10 that appeared to be non-operational

because its electrical switch was in disrepair. The PCB transformer contained 280-gallons of oil.

8. On or about May 12, 2016, Respondent advised the Alabama Department of Environmental Management (ADEM) by email, that the transformer was being stored until such time as it could be evaluated for repair or disposal.
9. During a follow-up inspection on or about June 29, 2016, the inspector observed the same non-operational GE Pyranol PCB transformer (serial number 7147125) being stored in substation M-10.
10. 40 C.F.R. § 761.3 defines a PCB Article as any manufactured article, other than a PCB Container, that contains PCBs and whose surface has been in direct contact with PCBs.
11. 40 C.F.R. § 761.35(a) provides that the owner or operator of a PCB Article may store it for reuse in an area that does not comply with 40 C.F.R. § 761.65(b) for a period no more than 5 years after the date the Article was originally removed from use, provided the owner or operator complies with specific requirements set forth in 40 C.F.R. §§ 761.35(a)(1) and (2). Pursuant to 40 C.F.R. § 761.35(b), the owner or operator may store the Article for longer than 5 years provided the EPA Regional Administrator for the Region in which the PCB Article is stored has issued a written approval. An owner or operator of a PCB Article seeking approval to extend the 5-year period must submit a request for extension to the EPA Regional Administrator at least 6 months before the 5-year storage for reuse period expires and must include an item-by-item justification for the desired extension. The EPA Regional Administrator may include any conditions to such approval deemed necessary to protect health or the environment. The owner or operator of the PCB Article being stored for reuse

must comply with the other applicable provisions of this part, including the record retention requirements at 40 C.F.R. § 761.180(a).

12. Respondent advised the EPA during a March 29, 2017, meeting that the transformer had been removed from service in February 2012, and continued to be stored for reuse, after February 2017, until shipped for disposal in April 2017, which was more than 5 years storage for reuse. Respondent did not submit a written request at least 6 months before expiration of the 5-year storage period for an extension to continue to store the transformer beyond 5 years showing justification for the desired storage, as required by 40 C.F.R. § 761.35(b). Respondent's storage of the transformer exceeded the initial allowable 5-year storage for reuse period under 40 C.F.R. § 761.35(a). As such, the EPA alleges that Respondent violated 40 C.F.R. §§ 761.35(a) and (b).
13. On April 26, 2017, Respondent submitted to the EPA a Letter Report and hazardous waste manifest showing that GE Pyranol PCB transformer (serial number 7147125) transformer located in substation M-10 had been shipped offsite to TCI of Alabama, LLC.
14. On May 5, 2017, ADEM visited Respondent's facility and confirmed that the PCB transformer had been shipped offsite.

IV. Consent Agreement

15. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
16. 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.
17. 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.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
19. This CAFO constitutes a settlement by the EPA of all claims for federal civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. The EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is Respondent's responsibility to comply with said laws and regulations.
20. 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

21. Respondent is assessed a civil penalty of **SIX THOUSAND DOLLARS (\$6,000.00)**, which shall be paid within 30 days from the effective date of this CAFO.
22. 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) 425-1818

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

**Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency."**

23. 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

William Kappler
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.

24. 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.
25. 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.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. 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

29. 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

AGREED AND CONSENTED TO:

Respondent: Kaiser Aircraft Industries, Inc.
Docket No.: TSCA-04-2017-2900(b)

By: *Doris Sewell* (Signature) Date: June 19, 2017
Name: DORIS SEWELL (Typed or Printed)
Title: CEO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: *Carol J. Marshall for* Date: 7/12/17
G. Alan Farmer
Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 1st day of August, 2017.

By: *Tanya Floyd*
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), in the Matter of Kaiser Aircraft Industries, Inc., Docket Number: RCRA-04-2017-2900(b), on 8-1-17 and on 8-1-17, served the parties listed below in the manner indicated:

Brandon Cobb
Attorney-Advisor
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA's Electronic Mail)

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

(Via EPA's Electronic Mail)

William Kappler
Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA's Electronic Mail)

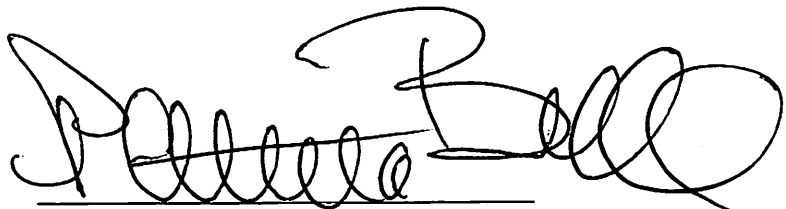
Quantindra Smith
Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA's Electronic Mail)

Ms. Doris Sewell, President
Kaiser Aircraft Industries, Inc.
1943 50th Street North
Birmingham, Aláabama 35212

(Via Certified Mail-Return Receipt Requested)

Date: 8-1-17



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