

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2009 JUL 29 AM 10: 53
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	DOCKET NO. TSCA-06-2009-6114
	§	
TEXAS ELECTRIC	§	COMPLAINT
COOPERATIVES, INC.	§	AND
AUSTIN, TEXAS	§	CONSENT AGREEMENT
	§	AND
RESPONDENT	§	FINAL ORDER
	§	

I. STATEMENT OF AUTHORITY

This proceeding for the assessment of civil penalties is initiated by the United States Environmental Protection Agency (EPA) pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615, against Texas Electric Cooperatives, Inc. (TEC), Austin, Texas (hereinafter Respondent) and is simultaneously commenced and concluded by the issuance of this Complaint and Consent Agreement and Final Order (Complaint and CAFO) pursuant to 40 C.F.R. § 22.13(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6, who is the person to whom authority has been delegated to issue such Complaints in the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

II. PRELIMINARY STATEMENT

1. Complainant and Respondent agree that settlement of this matter is in the public interest, and that entry of this Complaint and CAFO without further litigation is the most appropriate means of resolving this matter.

2. Respondent admits the jurisdictional allegations of this Complaint and CAFO; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this Complaint and CAFO. The Complaint states a claim upon which relief can be granted.
3. For purposes of settlement, Respondent expressly waives its rights to request a hearing on any issue of law or fact set forth herein and waives all defenses which have been raised or could have been raised to the claims set out in this Complaint and CAFO.
4. This Complaint and CAFO resolves the violations alleged herein.
5. For purposes of settlement, Respondent consents to the issuance of the Complaint and CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO.
6. Respondent is now certifying compliance with each of the relevant provisions of the TSCA PCB regulations codified at 40 C.F.R. Part 761.
7. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.
8. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent, Texas Electric Cooperatives, Inc. (TEC), Austin, Texas is a statewide organization that represents the interests of cooperative electric utilities in Texas and organized under the laws of the State of Texas and authorized to conduct

business in Texas. TEC is headquartered in Austin, Texas, and operates a place of business in Georgetown, Texas.

10. Respondent is a "person" as that term is defined in 40 C.F.R. § 761.3, and as such is subject to 40 C.F.R. Part 761.

11. Respondent owns and operates a place of business at 100 W. Cooperative Way, Georgetown, (Williamson County), Texas, identified as its Utility Supply & Service Division (US&S) which repairs and remanufactures electric system equipment and provides laboratory services, hazardous waste disposal, and environmental consulting services.

12. On or about April 1, 2005, Respondent was issued by EPA Region 6 pursuant to 40 CFR § 761.65(d) an approval to commercially store polychlorinated biphenyls (PCBs) at its US&S facility. This approval expires April 1, 2010.

13. On or about January 1, 2007, TEC entered into an agreement (the "Alliance Agreement") with Solomon Corporation, Inc. (Solomon), Solomon, Kansas.

14. On or about January 1, 2007, pursuant to the Alliance Agreement, Solomon assumed operational responsibility of the TEC US&S Georgetown repair facility.

15. On or about January 1, 2007, Solomon leased the TEC US&S facility and, in accordance with the Alliance Agreement, used and occupied such facility for the purpose of repairing, reconditioning and manufacturing transformers, voltage regulators, and reclosers and scrapping and disposing of old units for TEC's cooperative electric utilities in Texas.

16. On or about September 18, 2007, Respondent's Georgetown facility was inspected by a representative of EPA, Mr. Richard Gigger, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter the TSCA Inspection).
17. On September 18, 2007, Mr. Gigger presented his credentials to a representative of Respondent, Mr. Scott Meurer, TEC Environmental Services, as required by Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
18. On September 18, 2007, Mr. Gigger presented a TSCA Notice of Inspection and a TSCA Inspection Confidentiality Notice to Mr. Scott Meurer, as required by Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
19. At the time of the TSCA Inspection, there were 61 PCB Items (PCB concentration of 500 ppm or greater; 59 of which were drained) and 167 pieces of drained PCB-Contaminated Electrical Equipment (PCB concentration of 50 ppm or greater but less than 499 ppm) in the PCB disassembly and storage area; the PCB Annual Document Log for the calendar years 2002, 2003, 2004, and 2005 did not include for each PCB Item the removed from service for disposal date, the date received at the facility, the date placed in transport for off-site disposal, and the disposal date; the Hi-Section power transformer storage area was considerably larger than 120 feet by 30 feet as specified in Respondent's approval and the entrances were not marked with the PCB M_L Mark; and emergency contacts and telephone numbers were not posted in prominent locations throughout the facility as specified in Respondent's approval.

20. Pursuant to 40 C.F.R. § 761.3, "PCB" and "PCBs" are any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
21. "PCB waste(s)" is defined in 40 C.F.R. § 761.3 as those PCBs and PCB Items that are subject to the disposal requirements of subpart D of 40 C.F.R. Part 761.
22. "Disposal" is defined in 40 C.F.R. § 761.3 as as to intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharge of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.
23. Pursuant to 40 C.F.R. § 761.3, "Commercial storer of PCB waste" means the owner or operator of each facility that is subject to the PCB storage unit standards of § 761.65(b)(1) or (c)(7) or meets the alternate storage criteria of § 761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing the equipment owned by others and brokered for disposal.
24. Respondent is a "Commercial storer of PCB waste" as that term is defined in 40 C.F.R. § 761.3.
25. 40 C.F.R. § 761.65(c)(4)(i) states that the commercial storer of PCB waste shall submit a written request to the EPA Regional Administrator for a modification to its storage approval to amend its closure plan whenever there is a change in ownership, operating plans, or facility design which affects the existing closure plan.
26. 40 C.F.R. § 761.65(j) states that the EPA Regional Administrator will approve changes in ownership or operational control of a commercial storage facility.

27. 40 C.F.R. § 761.65 are rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.
28. Respondent's TSCA PCB commercial storer approval at IV. H. 5. states that emergency contacts, telephone numbers, and emergency exit routes must be posted in prominent locations throughout the Facility.
29. 40 C.F.R. § 761.40(a)(10) states that each storage area used to store PCBs and PCB Items for disposal must be marked with the PCB M_L Mark.
30. 40 C.F.R. § 761.40 are rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.
31. 40 C.F.R. § 761.180(a) and (b) requires the PCB Annual Document Log to include for each PCB Item the removed from service for disposal date, the date received at the facility, the date placed in transport for off-site disposal, and the disposal date.
32. 40 C.F.R. § 761.180 are rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.
33. Failure or refusal to comply with any rule promulgated, or order issued, under Section 6 of TSCA, 15 U.S.C. § 2605, constitutes an unlawful act under Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
34. Therefore, Respondent has violated Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), by failing to: 1) notify EPA and obtain written approval of a change in operational control as required by 40 C.F.R. §§ 761.65(e)(4)(i) and 761.65(j); 2) post emergency contacts, telephone numbers, and emergency exit routes in prominent locations throughout the Facility as required by Respondent's TSCA PCB commercial storer approval at IV.H.5.; 3) mark with the PCB Mark M_L the entrances to its Hi-Section

power transformer storage area as required by 40 C.F.R. § 761.65(e)(4)(i); and 4) include in its PCB Annual Document Log for the calendar years 2002, 2003, 2004, 2005, 2006, and 2007 for each PCB Item the removed from service for disposal date, the date received at the facility, the date placed in transport for off-site disposal, and the disposal date; rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.

IV. PARTIES BOUND

35. The provisions of this Complaint and CAFO shall apply to and be binding upon the parties to this action, its officers, directors, agents, servants, authorized representatives, employees, successors, and assigns. The undersigned representative of each party to this Complaint and CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Complaint and CAFO and to execute and to legally bind that party to it.

V. TERMS OF SETTLEMENT

36. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and upon consideration of the entire record herein, including the above Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent's ability to pay, effect on ability to continue in business, and history of prior such violations, the degree of culpability, and such other matters as justice may require, it is agreed that Respondent will be assessed a gravity based civil penalty of Forty Eight Thousand One Hundred Dollars (\$48,100).

37. The assessed amount has taken into account the particular facts and circumstances of this case with specific consideration of EPA's "Polychlorinated biphenyls (PCB)

Penalty Policy" effective April 9, 1990, a copy which is enclosed with this Complaint and CAFO. This policy provides for a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

38. Respondent consents to the issuance of this CAFO hereinafter recited and consents for the purposes of settlement to the payment of the civil penalty cited herein.

39. Within thirty (30) days of filing this Complaint and CAFO with the Regional Hearing Clerk, Region 6, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of Forty Eight Thousand One Hundred Dollars (\$48,100), to:

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

with a phone number of (513) 487-2091 or (513) 487-2105.

For overnight mail (non-U.S. Postal Service, e.g., FedEx, Airborne, UPS), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

with a phone number of (314) 418-1028.

For wire transfer, the payment should be remitted to:

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"

with a phone number of (412) 234-4381.

PLEASE NOTE: Docket number TSCA-06-2009-6114 shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given to the appropriate Region. Respondent shall also send a simultaneous notice of such payment including a copy of the cashier's or certified check, and transmittal letter to the following:

Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

Ms. Lou Roberts (6EN-HM)
Multimedia Enforcement Section
Hazardous Waste Enforcement Branch
Compliance Assurance & Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to this request will ensure proper credit is given when payment is received.

40. Failure to pay the assessed amount, as set forth above, may subject Respondent to a civil action pursuant to Section 16(a) of TSCA. Section 16(a) of TSCA authorizes EPA to collect any unpaid portion of the assessed penalty plus interest.

41. Pursuant to 31 U.S.C. § 3717, 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 a civil or stipulated penalty if it is not paid by the date required.

42. If EPA does not receive payment within thirty (30) days of the due date, and the Respondent cannot provide evidence that payment was properly sent, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment. If payment is overdue, EPA will also impose a late payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent thirty (30) day period. Finally, EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the due date. Other penalties for failure to make a timely payment may also apply.

VI. RETENTION OF ENFORCEMENT RIGHTS

43. Other than as provided herein, EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes or permitting programs.

44. Nothing in the CAFO shall relieve Respondent of the duty to comply with all applicable provisions of TSCA.

VII. COSTS

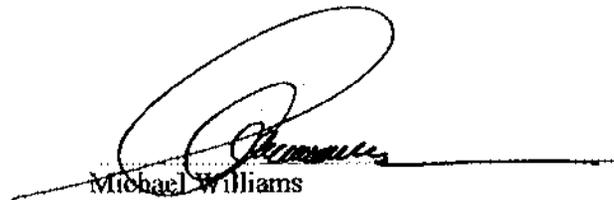
45. Each party shall bear its own costs and attorney fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date:

July 16, 2009

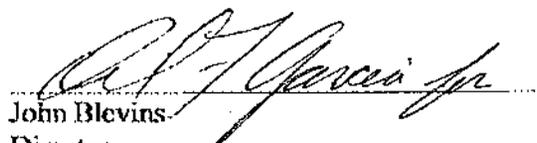


Michael Williams
President/CEO
Texas Electric Cooperatives, Inc.
Austin, Texas

FOR THE COMPLAINANT:

Date:

7/28/09

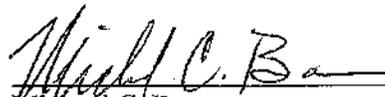


John Blevins
Director
Compliance Assurance
and Enforcement Division

VIII. FINAL ORDER

Pursuant to 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, 40 C.F.R. Part 22, the foregoing Consent Agreement in Docket Number TSCA-06-2009-6114 is hereby ratified. The Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. 40 C.F.R. § 22.31(b) provides that this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: July 29, 2009



Michael C. Barra
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July 2009, the original of the foregoing Complaint and Consent Agreement and Final Order (Complaint and CAFO) was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and CAFO and the PCB Penalty Policy was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Michael Williams
President/CEO
Texas Electric Cooperatives, Inc.
2550 S. IH-35
Austin, TX 78704

Receipt Number 7004 0950 0000 1695 6912

Lou Roberts
Lou Roberts
Environmental Protection Specialist