



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 30 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Sherry Tobia
Birmingham Restaurant Supply, Inc.
Tobia Properties, LLC
3806 Spring Valley Circle
Birmingham, Alabama 35223

RE: Birmingham Restaurant Supply, Inc. and Tobia Properties, LLC
Consent Agreement and Final Order
Docket No. TSCA-04-2014-2907(b)

Dear Ms. Tobia:

Enclosed please find a copy of the executed 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.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Birmingham Restaurant Supply, Inc. and Tobia Properties, LLC, on notice of their potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions or concerns, please contact Kris Lippert, of my staff, at (404) 562-8605.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata
Chief
Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2014 DEC 30 PM 12:47
HEARING CLERK

In the Matter of:)
)
Birmingham Restaurant Supply, Inc.)
Tobia Properties, LLC)
2428 6th Avenue South)
Birmingham, Alabama 35233)
)
Respondents)
)
_____)

Docket No. TSCA-04-2014-2907

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 Recovery Act (RCRA) Division, United States Environmental Protection Agency, Region 4 (EPA). Respondents are Birmingham Restaurant Supply, Inc. and Tobia Properties, LLC.
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 Recovery Act (RCRA) Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the

RCRA 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 Respondents.

3. Complainant and Respondents 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 penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues constitutes a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Kris Lippert
RCRA/OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8605

III. Specific Allegations

6. Each Respondent is a corporation doing business in the State of Alabama and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about September 12, 2013, EPA conducted an inspection at Respondents’ facility located at 2428 6th Avenue South, Birmingham, Alabama, to determine compliance with the PCB regulations.
8. During the inspection, EPA observed twelve (12) large Westinghouse Inerteen PCB Capacitors (PCB Capacitors) that had been removed from service and placed into storage for disposal. According to Respondents, the PCB Capacitors were taken out of service and stored prior to Respondents’ acquisition of the facility, which occurred more than a year prior to EPA’s inspection of the facility.
9. 40 C.F.R. § 761.65(a)(1) requires that any PCB waste must be disposed of as required by Subpart D of the PCB regulations within 1-year from the date it was determined to be PCB waste and the decision was made to dispose it. This date is the date of removal from service for disposal. At the time of EPA’s inspection, the PCB Capacitors had been removed from service and stored on-site for disposal for more than one year. Therefore, Respondents violated 40 C.F.R. § 761.65(a)(1).
10. 40 C.F.R. § 761.65(c)(8) requires that PCB Items be marked with the date when they were removed from service for disposal. At the time of the inspection, the PCB Capacitors being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, Respondents violated 40 C.F.R. § 761.65(c)(8).

11. 40 C.F.R. § 761.40(a)(3) requires PCB Large High Voltage Capacitors at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked shall be marked with an M_L marking as illustrated in the figure in 40 C.F.R. § 761.45(a). At the time of the inspection, the PCB Capacitors were not marked with the appropriate PCB label. Therefore, Respondents violated 40 C.F.R. § 761.40(a)(1).
12. 40 C.F.R. § 761.40(a)(10) requires that each storage area used to store PCBs and PCB Items for disposal be marked with an M_L as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the time of the inspection, the areas where the PCB Capacitors were being stored on-site awaiting disposal were not marked with an appropriate PCB label. Therefore, Respondents violated 40 C.F.R. § 761.40(a)(10) as incorporated by 40 C.F.R. § 761.40(c)(3).
13. 40 C.F.R. § 761.65(c)(5) requires all PCB Items in storage to be checked for leaks at least once every 30 days and records of those inspections shall be maintained in accordance with 40 C.F.R. § 761.180(a) and (b). At the time of the EPA inspection, Respondents were unable to provide documentation of any inspection of the PCB Capacitors. Therefore, Respondents violated 40 C.F.R. § 761.65(c)(5).

IV. Consent Agreement

14. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations.
15. Respondents waive their right to a hearing on the allegations contained herein and their right to appeal the proposed final order accompanying the consent agreement.
16. For the purposes of achieving a resolution by settlement, Respondents consent to the

assessment of the penalty proposed by EPA and agree to pay the civil penalty as set forth in this CAFO.

17. Each Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
18. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, 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 EPA, and it is Respondents' responsibility to comply with said laws and regulations.
19. Complainant and Respondents 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

20. Respondents are assessed a civil penalty of SEVEN THOUSAND TWO HUNDRED AND THIRTY-THREE DOLLARS (\$7,233.00), which shall be paid within 30 days from the effective date of this CAFO.
21. Respondents 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, Respondents 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 Respondents 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, Missouri 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, New York 10045

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

22. At the time of payment, Respondents 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;

Kris Lippert
RCRA and OPA Enforcement and Compliance Branch

U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

and

Saundi Wilson
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

23. For the purposes of state and federal income taxation, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondents to deduct any such payments shall constitute a violation of this CAFO.
24. 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 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.
25. Complainant and Respondents shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon each Respondent, its successors and assigns.
27. 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

28. 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: Birmingham Restaurant Supply, Inc.
Docket No.: TSCA-04-2014-2907(b)

By: Sherry N. Harvella-Tobia (Signature) Date: 10/24/2014
Name: Sherry N. Harvella-Tobia (Typed or Printed)
Title: Vice President/Treasurer (Typed or Printed)

Respondent: Tobia Properties, LLC.
Docket No.: TSCA-04-2014-2907(b)

By: Sherry N. Harvella-Tobia (Signature) Date: 10/24/2014
Name: Sherry N. Harvella-Tobia (Typed or Printed)
Title: Member (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: G. Ajan Farmer (Signature) Date: 12/16/2014
G. Ajan Farmer, Director
RCRA Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 23 day of December, 2014.

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

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 Birmingham Restaurant Supply, Docket Number: TSCA-04-2014-2907(b), on 12-30-14, and on 12-30-14, served the parties listed below in the manner indicated:

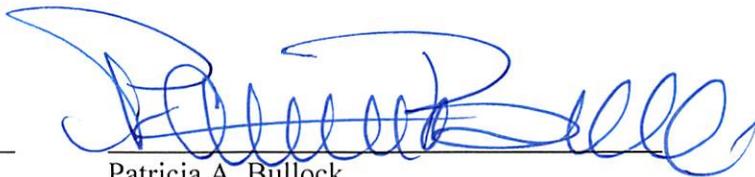
Bonnie Sawyer (Via EPA Internal Mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Kris Lippert (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Ms. Sherry Tobia
Birmingham Restaurant Supply, Inc.
Tobia Properties, LLC
3806 Spring Valley Circle
Birmingham, Alabama 35223

Date: 12-30-14



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