

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No. TSCA-05-2026-0006
)	
City of Brewster)	Consent Agreement and Final Order
Brewster, MN,)	Under Section 16(a) of the Toxic
)	Substances Control Act,
)	15 U.S.C §2615 (a)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C §2615(a), and Sections 22.1(a)(5), 22.13(b), 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3).

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is City of Brewster (Respondent), as part of a municipality operating under the laws of the State of Minnesota, with a place of business at 906 3rd Ave, Brewster, MN 56119.

4. 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). 40 C.F.R. § 22.13(b).

5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), required EPA to promulgate regulations that prescribed methods for the disposal of polychlorinated biphenyls (PCBs), and that required PCBs to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use or disposal or with respect to any combination of such activities. The Polychlorinated Biphenyls Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Fed. Reg. 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (PCB regulations) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB regulations were subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. 40 C.F.R. § 761.1(b)(1) states in part that the PCB regulations at 40 C.F.R. Part 761 apply to all persons who use or dispose of PCBs or PCB items; and that substances regulated by 40 C.F.R. Part 761 include dielectric fluids, oils, waste oils, sludges, slurries, sediments,

soils, materials containing PCBs as a result of spills, and other chemical substances or combinations of substances.

11. The PCB regulations define the term “PCB Waste” to include those PCBs and PCB Items that are subject to the disposal requirements of the PCB regulations at 40 C.F.R. Part 76, subpart D.

12. The PCB regulations at 40 C.F.R. 761.3 define the term “person” to include any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. The PCB regulations at 40 C.F.R. 761.3 define “disposal” to mean, inter alia, to intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB items, including spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB items.

14. The PCB regulations at 40 C.F.R. 761.3 define the term “PCB Item” to mean, inter alia, any PCB Article or PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

15. The PCB regulations at 40 C.F.R. 761.3 define the term “PCB Article” to mean any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. “PCB Article” includes, inter alia, transformers.

16. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), states in part that it is unlawful for any person to fail or refuse to comply with any requirement of TSCA or any rule promulgated under TSCA.

Factual Allegations

17. Respondent is a “person” as defined by 40 C.F.R §761.3 and is subject to the requirements and prohibitions set forth at 40 C.F.R Part 761.

18. Respondent is the “owner” or “operator,” of the facility at 906 3rd Ave, Brewster, MN 56119.

19. Respondent generated and shipped offsite for disposal PCBs or PCB Items and is subject to the requirements and prohibitions set forth at 40 C.F.R. Part 761.

20. On June 16, 2022, a representative of the Minnesota Pollution Control Agency (MPCA) inspected the Respondent’s facility.

Alleged Violations

Count 1

21. Complainant incorporates paragraphs 1 through 20 of the CAFO as if set forth in this paragraph.

22. At the time of inspection, Respondent had a transformer of unknown PCB content stored for reuse and was subject to the recordkeeping requirements of 40 C.F.R. § 761.35(a)(2).

23. It was determined through testing after the inspection that the referenced transformer was PCB-Contaminated.

24. At the time of the inspection, the facility had not created, and was unable to provide, documentation recording the removal from service date and projected location and future use of the PCB-contaminated transformer.

25. The Respondent’s failure to prepare and provide documentation of plans for storage for reuse constitutes a violation of 40 C.F.R § 761.35(a)(2).

Count 2

26. Complainant incorporates paragraphs 1 through 20 of the CAFO as if set forth in this paragraph.

27. At the time of inspection, Respondent had previously generated PCB Waste and was subject to the recordkeeping requirements of 40 C.F.R. § 761.180(a)

28. At the time of the inspection, the facility had not created, and was unable to provide, an Annual Document Log for calendar year 2020. The Respondent's failure to prepare and provide the annual document log constitutes a violation of 40 C.F.R. § 761.180(a).

Count 3

29. Complainant incorporates paragraphs 1 through 20 of the CAFO as if set forth in this paragraph.

30. At the time of inspection, Respondent had previously generated PCB waste and was subject to the manifesting requirements of 40 C.F.R § 761.207(a).

31. At the time of inspection, review of documents determined that Respondent failed to specify on the manifest the accurate earliest date of removal from service for disposal of PCB waste on Manifest #021906738JJJ. The transformers from which the PCB waste on the manifest was drained were removed from service for disposal on or before October 30, 2020. On the manifest, the listed date removed from service was November 3, 2020.

32. The Respondent's failure to accurately specify the date removed from service for disposal constitutes a violation of § 761.207(a).

Civil Penalty

33. Pursuant to Section 16 of TSCA, 15 U.S.C § 2615, Complainant determined that an appropriate civil penalty to settle this action is \$4,783.17. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to

comply with the applicable requirements. Complainant also considered U.S. EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990.

34. Respondent agrees to pay a civil penalty in the amount of **\$4,783.17** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

35. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

36. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, TSCA-05-2026-0006.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Jaime Brown
Land Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
brown.jaime.l@epa.gov and
R5LEECAB@epa.gov

Puja Lakhani Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5

Lakhani.Puja@epa.gov

U.S. Environmental Protection
Agency Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

37. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA

will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

38. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or

suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

39. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

40. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

General Provisions

41. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Lakhani.Puja@epa.gov (for Complainant), and clerk@brewstermn.us (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

42. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 16(a) of TSCA, 15 U.S.C. §1615(a) for the violations alleged in this CAFO.

43. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

45. Respondent certifies that it is complying fully with TSCA and the PCB

Regulations.

46. The terms of this CAFO bind Respondent, its successors, and assigns.

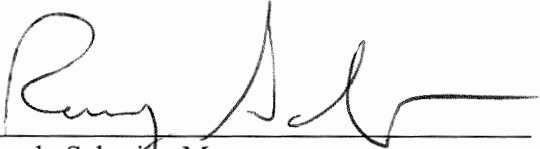
47. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

48. Each party agrees to bear its own costs and attorney's fees in this action.

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

City of Brewster, Respondent

10-7-2005
Date


Randy Schmitz, Mayor
City of Brewster

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

In the Matter of:
City of Brewster, MN
Docket No. TSCA-05-2026-0006

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.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5