

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

Complainant's Motion for Leave to Amend Consent Agreement and Final Order

Introduction

Complainant, Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 5, by and through the undersigned attorney, files the instant motion for leave to amend the Consent Agreement and Final Order (CAFO) originally filed with the Regional Hearing Clerk on October 6, 2025. More specifically, ***Complainant seeks to substitute the attached CAFO for the one filed on October 6, 2025.*** A signed copy of the CAFO as amended is attached to the instant motion, along with a proposed Final Order for signature by the Regional Judicial Officer.

Procedural History and Argument

On October 6, 2025, a CAFO was filed with the Regional Hearing Clerk memorializing a settlement between Complainant, Director, Enforcement and Compliance Assurance Division, U.S. EPA, Region 5, and Respondent, the City of Eitzen, Minnesota. This CAFO resolved allegations that the City of Eitzen had committed the following violations of Section 15 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2614, and the TSCA polychlorinated biphenyls (PCB) regulations:

Count 1 – failing to maintain required records on PCB wastes, in violation of 40 C.F.R. § 761.180(a);

Count 2 – failing to dispose of PCB waste in the form of a PCB-contaminated transformer within one year from the date it was determined to be PCB waste and the decision was made to dispose of it, in violation of 40 C.F.R. § 761.65(a); and

Count 3 – failing to include on a manifest the correct date on which PCB-contaminated transformers had been removed from service for disposal, in violation of 40 C.F.R. § 761.207(a). The CAFO required Respondent to pay a civil penalty of \$4,186.56.

After the filing of this CAFO, Complainant's staff on this case (who were not the original personnel assigned to this matter) realized that, with respect to Counts 2 and 3 of the CAFO, the evidence indicated that these two alleged violations had been committed more than five years prior to the date on which the CAFO was filed. Complainant determined that, in the interests of justice and in light of certain equitable considerations, those two counts should be dismissed, because Complainant's normal policy and practice would have been to forego attempting to pursue penalty claims for violations of that age. More specifically, given the length of time between commission of those two alleged violations and Complainant's initiation of the enforcement proceeding, Complainant, as a general enforcement approach, would have conservatively treated those violations as falling outside the applicable statute of limitations, rather than attempting to assert arguments for tolling of the statute of limitations (*e.g.*, an argument that, because Complainant had *discovered* the commission of the alleged violations less than five years prior to the filing of the CAFO, a penalty action for those violations still could be pursued notwithstanding the five-year statute of limitations). Therefore, Complainant decided that, in the interests of justice, it should dismiss Counts 2 and 3 of the CAFO, and reduce the penalty accordingly.

Other equitable considerations that favor the non-pursuit of a penalty action for the two counts at issue in this motion include the fact that Respondent City of Eitzen is a small municipality, who appeared *pro se* throughout the instant proceeding, and the fact that

Respondent corrected the alleged violations promptly following the original inspection, and did not engage in any efforts to conceal the violations from state or federal regulatory personnel. In light of these considerations, Complainant has determined that the CAFO should be amended to remove original Counts 2 and 3, and that the penalty should be reduced correspondingly to a total of \$1,744.40 (a penalty figure calculated for the remaining count, Count 1).

Conclusion and Prayer for Relief

For the reasons set forth above, Complainant respectfully moves the Presiding Officer to GRANT Complainant's Motion for Leave to Amend Consent Agreement and Final Order. Complainant requests that, should the Presiding Officer grant the instant motion, the attached CAFO, once signed by the Director of the Enforcement and Compliance Assurance Division, be signed by the Regional Judicial Officer and filed with the Regional Hearing Clerk (superseding the CAFO previously filed on October 6, 2025).

Respectfully Submitted,

December 16, 2025

Date

James J. Cha
Section Supervisor
MMB II, Section 3
Office of Regional Counsel
Region 5
U.S. Environmental Protection Agency

In the Matter of:
City of Eitzen, MN
Docket No. TSCA-05-2026-0001

Order on Complainant's Motion for Leave to Amend Consent Agreement and Final Order

Complainant's Motion for Leave to Amend the Consent Agreement and Final Order
(CAFO) in the above-captioned matter is hereby GRANTED. Complainant is directed to route the amended Consent Agreement and Final Order signed by the Respondent on November 21, 2025, to the undersigned for signature of the Final Order and filing with the Regional Hearing clerk. Upon signature by the undersigned, the amended Consent Agreement and Final Order shall supersede the CAFO filed on October 6, 2025. IT IS SO ORDERED.

December 16, 2025

Date

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