

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

In the Matter of:)
)
RM Commercial) Docket No. TSCA-04-2020-3201(b)
450 West Ridge Street)
Rocky Mount, North Carolina 27801)
)
Respondent.)
_____)

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 Enforcement and Compliance Assurance Division of EPA, Region 4, who has been delegated the authority to settle civil administrative penalty proceedings under Section 16(a) of TSCA. Respondent is RM Commercial.
2. 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

3. 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 Section 15 of TSCA, 15 U.S.C. § 2614 may be assessed a civil penalty in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

4. Respondent is a user of PCB Items operating in the State of North Carolina and is a "person" as defined in 40 C.F.R. § 761.3.
5. On or about November 19, 2019, an inspection was conducted by the EPA at a facility owned and operated by Respondent, located at 450 West Ridge Street, Rocky Mount, North Carolina, to determine compliance with the PCB regulations.
6. At the time of the inspection, Respondent was storing the following PCB Items for disposal: two Westinghouse pad mounted PCB transformers each filled with 293 gallons of Inerteen fluid which exhibits a PCB concentration greater than 500 ppm; one pole mounted transformer filled with 55-gallons of fluid containing PCBs greater than 500 ppm; and two pole mounted transformers, each filled with 55-gallons of fluid containing PCBs between 50 and 500 ppm.
7. The term "PCB transformer" is defined in 40 C.F.R. § 761.3, as any transformer that contains ≥ 500 ppm PCBs.
8. The term "PCB items" is defined in 40 C.F.R. § 761.3, as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
9. The term "PCB articles" is defined in 40 C.F.R. § 761.3, as 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 capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape

or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

10. Pursuant to 40 C.F.R. § 761.65(c)(5), all PCB Items in storage are required to be checked for leaks at least once every 30 days. Records of those inspections are required to be maintained in accordance with 40 C.F.R. § 761.180(a) and (b). During the November 19, 2019 inspection, the EPA inspector determined that the Respondent had not conducted or documented any inspections of the PCB Items listed in Paragraph 6 above. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.65(c) (5) and 40 C.F.R. § 761.180(a).
11. Pursuant to 40 C.F.R. § 761.180(a), a written annual document log and annual records are required for anyone that uses or stores at any one time at least 45 kilograms of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors. The log must be prepared by July 1 for the previous calendar year and maintained for three years after PCBs are ceased being used or stored. At the time of the November 19, 2019 inspection, Respondent did not have any written annual document logs and/or annual records. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.180(a).
12. Pursuant to 40 C.F.R. § 761.65(b)(1), PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. At the time of the November 19, 2019 inspection, Respondent was storing the PCB Items listed in Paragraph 6 above for disposal in areas that did not meet the requirements of 40 C.F.R. § 761.65(b)(1). Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(b)(1).
13. Pursuant to 40 C.F.R. § 761.40(a), PCB Transformers 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_I marking as illustrated in the figure in 40 C.F.R. § 761.45(a). At the time of the November 19, 2019 inspection, one of the pole mounted PCB transformers listed in Paragraph 6 above was not marked with the appropriate PCB label. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(a).
14. Pursuant to 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked as illustrated in 40 C.F.R. § 761.45(a). At the time of the November 19, 2019 inspection, Respondent was storing for

disposal the PCB Items listed in Paragraph 6 above in areas that did not meet the requirements of 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3). Therefore, the EPA alleges that Respondent violated 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3).

15. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items are required to be marked with the date when they were removed from service for disposal. At the time of the November 19, 2019 inspection, the PCB Items listed in Paragraph 6 above being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(8).
16. Pursuant to 40 C.F.R. § 761.65(a)(1), 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. The PCB Items listed in Paragraph 6 above were stored for disposal on-site from at least 2014 until present. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.65(a)(1).
17. Pursuant to 40 C.F.R. § 761.205(c)(2), PCB generators subject to the storage requirements of 40 C.F.R. §§ 761.65(b) or (c)(7), are required to notify EPA of their PCB waste activities by filing EPA Form 7710-53. At the time of the November 19, 2019, inspection, Respondent had failed to notify EPA of the PCB waste activities by filing EPA Form 7710-53. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.205(c)(2).

IV. Consent Agreement

18. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
19. 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.
20. 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.
21. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.

22. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
23. 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

24. Respondent is assessed a civil penalty of **FORTY-ONE THOUSAND AND THREE HUNDRED DOLLARS (\$41,300.00)**, which shall be paid within 30 days from the effective date of this CAFO.
25. Respondent shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Respondent's name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Address for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101

Delivery Contact Phone Number: (314) 425-1819

If paying by EFT, transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

If paying by ACH, remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
REX (Remittance Express): 1-866-234-5681

26. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

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

and

Kris Lippert
Chemical Safety Section
Chemical Safety and Land Enforcement Branch
Enforcement Compliance and Assurance Division

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

27. 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.
28. 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.
29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
30. This CAFO shall be binding upon the Respondent, its successors and assigns.
31. 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

32. 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

Complaint and Respondent will Each Sign on Separate Pages]

The forgoing Consent Agreement In the Matter of **RM Commercial**, Docket Number **TSCA-04-2020-3201(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:



Signature

4/23/20

Date

Printed Name: Michael J. Goodman
Title: SVP
Address: PO Box 611
Durham, NC 27702

The forgoing Consent Agreement In the Matter of **RM Commercial**, Docket Number **TSCA-04-2020-3201(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

By: _____

Carol L. Kemker
Director
Enforcement Compliance and Assurance Division
U.S. Environmental Protection Agency, Region 4

Date: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

RM Commercial

Respondent.

Docket No. TSCA-04-2020-3201(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the **Matter of RM Commercial, Docket No. TSCA-04-2020-3201(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties:

To Respondent:

Peter J. McGrath, Jr., Esq.
Moore & VanAllen
petermcgrath@mvalaw.com

To EPA:

Kris Lippert
Chemical Safety Section
Chemical Safety and Land Enforcement Branch
Enforcement Compliance and Assurance Division
U.S. EPA Region 4
lippert.kris@epa.gov

Lynda Crum
Associate Regional Counsel
U.S. EPA Region 4
crum.lynda@epa.gov

Quantindra Smith
Targeting, Data & Measures Office
Enforcement Compliance and Assurance Division
U.S. EPA Region 4
smith.quantindra@epa.gov

Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960