



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 10 PM 2:42
REGIONAL HEARING
CLERK

SEP - 9 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Smith
Railside LLC
217 North Street
Caledonia, New York 14423

Re: In the Matter of Railside LLC
Docket No. TSCA-02-2009-9203

Dear Mr. Smith:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of your payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Mr. Chester Norman of my staff at (732) 906-6811, should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth S. Stoller".

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. 2
2009 SEP 10 PM 2:42
REGIONAL HEARING CLERK
CONSENT AGREEMENT AND FINAL ORDER

In the Matter of :
:
Railside LLC, :
:
Respondent :
:
Proceedings under Section 16(a) of the Toxic :
Substance Control Act. :
:
:

Docket No. TSCA-02-2009-9203

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, Railside LLC ("Respondent"), on April 30, 2009.

The Complaint charged Respondent with a violation of Section 6(e) of the TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

FINDINGS OF FACT

1. Respondent is Railside LLC.
2. Respondent owns, operates, and/or controls the facility in and around 217 North Street in Caledonia, New York (hereinafter "Respondent's facility").
3. On or about October 20, 2008, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.

4. Respondent failed to mark PCB High Voltage Capacitor with the PCB mark M_L , in accordance with the specifications and requirements of 40 C.F.R. § 761.40(a)(10).

5. On May 13, 2009, the parties met for an informal settlement conference via telephone.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of the above referenced Complaint, is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.

2. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

3. Failure to mark a PCB capacitor with the PCB mark M_L is a violation of 40 C.F.R. § 761.40, which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "Consolidated Rules"), it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

2. For the purposes of this Consent Agreement, Respondent (a) admits the jurisdictional allegations of the Complaint, and (b) neither admits nor denies the specific factual allegations contained in the Complaint.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"
- 6) Name of Respondent
- 7) Docket Number

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the due date). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Chester Norman
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In

addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protection and improvements. Within 30 days of receiving a copy of this Agreement signed by the Regional Administrator, Respondent shall initiate a SEP to remove and transport for disposal 2 PCB capacitors currently located at Respondent's facility. These are the PCB Large High Voltage Capacitor that was the subject of this enforcement action (GE Capacitor serial number X66594) and one PCB Small Capacitor.

5. The total expenditure for the SEP shall be not less than \$1,200 in accordance with the cost estimate provided to EPA.

6. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that they will not deduct nor capitalize SEP costs for federal income tax purposes.

7. Nothing herein is meant to waive Respondent's responsibility to ensure that all PCBs and PCB Items are disposed of within one year of the date they are removed from service for disposal, as required under 40 C.F.R. Part 761.

8. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the removal and proper disposal of the PCB Capacitors as herein required shall be the sole determination of EPA.

9. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP.

a. Respondent shall submit a SEP Completion Report to EPA within 9 months of the date of this Consent Agreement. The SEP Completion Report shall contain the following information:

(i) a brief description of the SEP as implemented;

- (ii) itemized costs, documented by copies of purchase orders and receipts or canceled checks; and
- (iii) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order.

b. The SEP Completion Report shall be submitted to the EPA staff member at the address cited in paragraph 3, above.

c. Respondent agrees that failure to submit the SEP Completion Report required by subsection (a) above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 10, below.

10. a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph 4, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 5 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) For a SEP which has not been completed satisfactorily pursuant to paragraph 4, above, Respondent shall pay a stipulated penalty to the United States in the amount of \$750.
- (ii) For failure to submit the SEP Completion Report required by paragraph 9 above, Respondent shall pay a stipulated penalty in the amount of \$10 for each day after the date the report was due, until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for subparagraphs (i) and (ii) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 3 above. Interest and late charges shall be paid as stated in paragraph 3 above.

11. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with

the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for a violation of the federal regulations at 40 C.F.R. Part 761”.

12. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

13. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

14. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or the accompanying Final Order.


15. Respondent waives any right it may have pursuant to 40 C.F.R. 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.


16. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

17. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

18. Each party shall bear its own costs and attorneys fees in this matter.

19. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BY: 
Railside LLC
NAME: R. L. SMITH
(PLEASE PRINT)
TITLE: PARTNER
DATE: 8-24-09

COMPLAINANT: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007
DATE: 7/1/09

In the Matter of Railside LLC

Docket Number TSCA-02-2009-9203

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Complaint bearing Docket No. TSCA-02-2009-9203, issued in the matter of Railside LLC, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: 9/2/09



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of September, 2009,

I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2009-9203, by certified mail, return receipt requested, to:

Mr. Richard Smith
Railside LLC
217 North Street
Caledonia, New York 14423

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.

Gail Kohn