

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Perimeter Properties, LLC)
500 West 26th Street)
Chattanooga, Tennessee 37401)
)
Respondent)
_____)

Docket No. TSCA-04-2009-2903

2009 SEP 15 PM 12:47
RECEIVED
EPA REGION 4
ATLANTA, GA

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 Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Perimeter Properties, LLC.
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. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. 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 \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

5. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Randy Jackson
South Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
404-562-8464

III. Specific Allegations

6. Respondent is a user of Polychlorinated Biphenyl (PCB) Items operating in the State of Tennessee and is a "person" as defined in 40 C.F.R. § 761.3.
7. Pursuant to 40 C.F.R. § 761.3, PCB and PCBs mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
8. Pursuant to 40 C.F.R. § 761.3, PCB Item means 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. Pursuant to 40 C.F.R. § 761.3, PCB Article means 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 but is not limited to transformers.
10. Pursuant to 40 C.F.R. § 761.3, PCB Transformer means any transformer that contains ≥ 500 ppm PCBs.
11. On or about June 18, 2008, an inspection was conducted at Respondent's facility located at 500 West 26th Street, in Chattanooga, Tennessee to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs.
12. At the time of the inspection, Respondent possessed a ITE transformer, serial number 14882, which contained 465 gallons of fluid with a PCB concentration greater than 500 ppm, a General Electric transformer, serial number H883578, which contained 159 gallons of fluid with a concentration greater than 500 ppm, and a Moloney transformer, serial number 911815, which contained 620 gallons of fluid with a PCB concentration greater than 500 ppm. These transformers were located in enclosed areas within the facility.
13. Pursuant to 40 C.F.R. § 761.30(a)(1)(iii), combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB transformer enclosure, within 5 meters of a transformer enclosure or if unenclosed within 5 meters of a

transformer. Respondent failed to keep combustible materials from within 5 meters of the transformer enclosure as required in 40 C.F.R. § 761.30(a)(1)(iii).

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
15. 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.
16. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of Section 6(e) 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 Respondent's responsibility to comply with said laws and regulations.
19. 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. Terms of Settlement

20. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), the nature of the alleged violation, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **TWO THOUSAND EIGHT HUNDRED FIFTY Dollars (\$2,850)**.
21. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty as cited in the foregoing paragraph and to the performance of the SEP set forth herein.
22. Respondent shall complete the following Pollution Prevention SEP, which the parties agree is intended to secure significant environmental or public health protection.
 - a. By October 30, 2009, the Respondent shall remove from use and appropriately dispose of the three PCB Transformers in its possession.
 - b. By October 30, 2009, the Respondent shall replace, if necessary, all PCB

Transformers removed and disposed of pursuant to this SEP with Transformers that do not contain PCBs.

23. The total expenditure for the SEP shall not be less than **ELEVEN THOUSAND FOUR HUNDRED Dollars (\$11,400)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein.
24. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after the completion of the SEP. The SEP Completion Report shall contain the following information:
 - a. a detailed description of the SEP as implemented;
 - b. an affidavit from an authorized company official attesting that the SEP has been completed or explaining in detail any failure to complete;
 - c. copies of all annual records and reports required by 40 C.F.R. Part 761, including manifests concerning transportation and disposal of PCBs;
 - d. copies of relevant records documenting expenditures associated with the SEP including, but not limited to work orders, scope(s) of work, bills, payment records, and copies of checks;
 - e. an inventory of all PCB Items in the possession of the Respondent at the conclusion of the SEP.
25. Respondent agrees that failure to submit the SEP Completion Report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 29 below.
26. Respondent shall submit all reports required by this CAFO by first class mail or overnight delivery service to the following:

Randy Jackson
South Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

27. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
28. Respondent agrees that failure to comply with any of the terms or provisions of this CAFO

relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraphs 23 and 24 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) immediately below, in the event that Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of **ELEVEN THOUSAND FOUR HUNDRED Dollars (\$11,400)** for the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of **ELEVEN THOUSAND FOUR HUNDRED Dollars (\$11,400)**;
 - b. If the SEP is not fully and timely completed, but the Complainant determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - c. If the SEP is fully and timely completed, but Respondent spent less than 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall pay a stipulated penalty in the amount of **ONE THOUSAND ONE HUNDRED FORTY Dollars (\$1,140)**;
 - d. For failure to timely submit a SEP Completion Report required by Paragraph 27 above, Respondent shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100) for each day the report is late;
 - e. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA;
 - f. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 33 and 34 below.
29. Respondent certifies that, as of the date this CAFO is signed, Respondent is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
30. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
31. 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

violations of Section 6(e) of TSCA, 15 U.S.C. § 2605.”

VI. Final Order

32. Respondent is assessed a civil penalty of **TWO THOUSAND EIGHT HUNDRED FIFTY Dollars (\$2,850)** which shall be paid within 30 days from the effective date of this CAFO.
33. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

The check shall reference on its face the name of the Perimeter Properties, LLC and Docket Number TSCA-04-2009-2903.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson (314) 418-4087

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

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

Randy Jackson
South Enforcement Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

and

35. 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.
36. 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.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. The undersigned representative of the party 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.

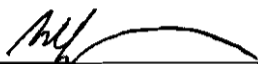
VII. Effective Date

40. 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:

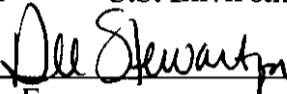
Respondent: Perimeter Properties, LLC
Docket No.: TSCA-04-2009-2903

By: Perimeter Properties, LLC (Signature) Date: 8-15-09

Name:  Gary Chazen (Typed or Printed)

Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8/28/09

G. Alan Farmer
Director
Resource, Conservation and Recovery Act
Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 16th day of Sept, 2009.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Perimeter Properties, LLC, Docket No. TSCA-04-2009-2903 (filed with the Regional Hearing Clerk on SEP 16 2009, 2009) was served on SEP 16 2009, 2009 in the manner specified to each of the person set forth below:

Mr. Gary Chasen, President
Perimeter Properties, LLC
P.O. Box 6308
Chattanooga, Tennessee 37401

CERTIFIED MAIL
Return Receipt Requested

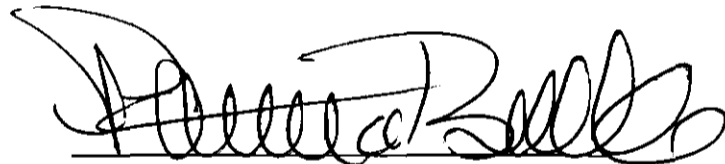
Robert Caplan, Senior Attorney
Environmental Accountability Division
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, GA 30303

Via EPA's Internal Mail

Randy Jackson
RCRA & OPA Enforcement & Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303

Via EPA's Internal Mail

Date: 9-16-09



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 9/15/09 (Name) (Date)

in the Region 4, ORC, OEA (Office) at (404) 562-9504 (Telephone Number)

- Non-SF Judicial Order/Consent Decree USAO COLLECTS
Administrative Order/Consent Agreement FMO COLLECTS PAYMENT
SF Judicial Order/Consent Decree DOJ COLLECTS
Oversight Billing - Cost Package required: Sent with bill
Other Receivable
Not sent with bill
This is an original debt
Oversight Billing - Cost Package not required
This is a modification

PAYEE: Perimeter Properties (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2850- (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2903

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)