



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 25 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Juanita M. Bursley  
Corporate Senior Manager  
GrafTech International Holdings Incorporated  
12900 Snow Road  
Parma, OH 44130

SUBJ: Docket No. TSCA-04-2009-2900(b)  
GrafTech Incorporated

Dear Ms. Bursley:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties pursuant to Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Pursuant to Section 37 of the CAFO, the assessed penalty of \$4,100 is due within 30 days after the effective date of the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO.

Should you have any questions about this matter or your compliance status in the future, please feel free to contact me at (404) 562-8976 or Raj Aiyar at (404) 562-8993.

Sincerely,

A handwritten signature in black ink that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
)  
Graftech International Holdings, Inc. )  
Highway 43 South )  
Lawrenceburg, Tennessee 38464 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No. TSCA-04-2009-2900(b)

RECEIVED  
EPA REGION 4  
HEARING CLERK

2010 FEB 25 PM 12:35

**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 (RCRA) Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Graftech International Holdings, Incorporated.
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 pertaining to Polychlorinated Biphenyls (PCBs) 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 between March 15, 2004, and January 12, 2009, a penalty of up to \$32,500 may be assessed. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 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:

Raj Aiyar  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-8993

## **III. EPA's Allegations**

6. Respondent occupies a facility where PCBs are in use in the State of Tennessee and is a "person" as defined in 40 C.F.R. § 761.3.

7. Respondent 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.
8. On or about January 24, 2008, an inspection was conducted by representatives of Tennessee Department of Environment & Conservation at Respondent's facility located at US Highway 43 South, Lawrenceburg, Tennessee (Lawrenceburg facility), to determine compliance with the PCB regulations.
9. At the time of the inspection, Respondent had two PCB Transformers (containing greater than 500 ppm PCBs) in service.
10. The two Wagner transformers, serial numbers 9L12302 and 9L17415 located in the West Brick Building contained 735 gallons and 1,200 gallons of PCB dielectric fluid respectively.
11. The two Wagner PCB Transformers along with other PCB Transformers were all retro-filled at the facility between 1988 and 1996, and after testing showed PCB concentrations had been reduced below 50 ppm. Respondent re-classified the transformers as non-PCB transformers.
12. In 2007 and in 2008, Respondent retested the retro-filled transformers to determine the current PCB concentrations. Analytical results showed that PCB concentrations in the two Wagner transformers had rebounded above 500 ppm and as such, the two transformers were considered to be PCB Transformers and PCB Items as defined in 40 C.F.R. §761.3.
13. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(D), a transformer owner must comply with all requirements of paragraph 40 C.F.R. § 761.30 (a)(1)(vi)(A) to continue the PCB Transformer's authorization for use.
14. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A)(1), a transformer owner who assumes that a transformer is a PCB-contaminated transformer (containing greater than or equal to 50 ppm

but less than 500 ppm PCBs), and discovers that after December 28, 1998, the transformer is a PCB Transformer and must register the newly-identified PCB Transformer in writing to EPA no later than 30 days after it is identified as such.

15. Respondent failed to register the two newly-identified PCB Transformers, as described in paragraph 12 above, with EPA within 30 days after being identified. This is a violation of 40 C.F.R. § 761.30(a)(1)(vi)(A)(1).
16. Respondent's failure to register the two Wagner PCB Transformers within 30 days after discovering that PCB concentration were above 500 ppm, is a violation of 40 C.F.R. § 761.30(a)(1)(vi)(A)(1) and is constituted as an unauthorized use of the PCB transformers pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(D).
17. Respondent's unauthorized use of its PCB Transformers, as alleged in paragraph 16 above, constitutes a failure to comply with 40 C.F.R. § 761.30(a)(1)(vi)(D), which is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. §2614(1)(C).

#### **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 allegations set forth above.
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. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of 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 FOUR THOUSAND, ONE HUNDRED DOLLARS (\$4,100).

21. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in Section V of this CAFO and to perform the SEP set forth herein.
22. 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 and the PCB regulations found in C.F.R. part 761.
23. 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.
24. 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**

25. Respondent is assessed a civil penalty of FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100), which shall be paid within 30 days from the effective date of this CAFO.
26. Respondent may remit payment either by mail or electronically as described below. If payment is made by mail, 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 Respondent and the Docket Number TSCA-04-2009-2900(b) for this CAFO.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

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

Contact: Natalie Pearson (314) 418-4087

If payment is made by wire transfer, it should be directed to the Federal Reserve Bank of New York using the following instructions:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

Alternatively, payment can be made through the Automated Clearinghouse "ACH" (also known as REX or remittance express), as follows:

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

Any electronic payment shall also note the EPA Docket Number for this matter.

27. At the time of payment, Respondent shall send a separate copy of the check or confirmation of electronic payment 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 SW  
Atlanta, Georgia 30303-8960

Raj Aiyar  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

28. 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.
29. 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.



30. Supplemental Environmental Project (SEP). Respondent shall undertake and complete the following SEP which the parties agree is intended to secure the significant environmental protection:
- a. Remove, transport for disposal, and dispose of all intact, non-leaking large PCB capacitors from four presses at its Lawrenceburg, Tennessee facility. The total number of capacitors in the four presses is believed to be 126, but the final report submitted to EPA in accordance with Paragraph 34 herein will provide the exact number of Capacitors retired.
  - b. Disposal of the large PCB capacitors shall comply with the requirement in 40 C.F.R. § 761.60.
  - c. By the completion of the SEP, Respondent shall have removed and disposed of approximately 75% of the estimated total number of PCB capacitors (168) in service at the Lawrenceburg, Tennessee facility.
31. Upon completion of the SEP, it is estimated that approximately 2,893 pounds of PCBs will be removed and properly disposed. The SEP will be conducted in accordance with EPA's Final SEP policy issued April 10, 1998.
32. Respondent will complete the SEP by no later than March 31, 2010, at a minimum cost of Twelve Thousand Three Hundred Dollars (\$12,300).
33. 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.
34. Respondent shall submit the following documentation to Mr. Aiyar at the address listed in paragraph 5 regarding the progress and completion of the SEP:

- a. A final report by May 31, 2010, detailing all activities undertaken to complete the retirement of the large PCB capacitors in connection with the SEP. This report shall include an affidavit from an authorized company official which shall state that the project was completed as proposed, or explaining in detail, any failure to complete or any deviation and/or modification to the SEP.
  - b. Respondent shall provide documentation of the expenses incurred for the removal, transportation for disposal, and disposal of the large PCB capacitors referenced in paragraph 30, including but not limited to copies of invoices and evidence of payment by June 30, 2010. In the event that a contractor, hauler or disposal facility delays in sending Respondent documentation required by this section such that Respondent cannot submit it to EPA by June 30, 2010, Respondent may request an extension of time from EPA, provided such request is made as soon as Respondent learns of the delay.
  - c. Respondent shall provide documentation showing the proper manifesting, transportation and disposal of the large PCB capacitors, including, but not limited to, signed manifest(s) and certificate(s) of disposal, within 30 days of Respondent's receipt of certificate(s) of disposal from waste contractor.
  - d. Upon request, Respondent shall send EPA any additional documentation concerning implementation of the SEP within ten (10) business days from receiving EPA's written request by letter or email,
35. Failure to submit the SEP Completion report or any progress 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 36 below unless otherwise waived by EPA.

36. Respondent agrees that EPA may inspect Respondent's facility and review all records associated with the SEP project, at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the SEP as set forth herein.
37. Respondent certifies that, as of the date this CAFO is signed, it 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 as of this date, it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action.
38. If the Respondent fails to timely and fully complete any part of the SEP, including the failure to spend the minimum amount of Twelve Thousand Three Hundred Dollars (\$12,300), Respondent shall pay to the United States a stipulated penalty of \$16,400.00 except as follows:
- a. If the SEP was fully and timely completed, and Respondent expended at least NINETY PERCENT (90%) of the total amount required, Respondent shall not pay a stipulated penalty.
  - b. If the SEP was not fully and timely completed, but Respondent spent at least NINETY PERCENT (90%) of the total amount required, Respondent shall not pay a stipulated penalty if it made good faith effort to fully and timely complete the SEP.
  - c. If the SEP was fully and timely completed, but Respondent spent less than NINETY PERCENT (90%) of the total amount required, Respondent shall pay a stipulated penalty of \$2,500. For purposes of this paragraph, determination as to whether the Respondent has fully and timely completed the SEP and whether Respondent has made a good faith effort to do so shall be at the sole discretion of EPA. For purposes of this section, Respondent may submit to EPA for its consideration, any information, documentation or

other evidence explaining the circumstances under which the SEP was not fully or timely completed or expenditures were less than 90%.

39. If Respondent fails to timely submit the documentation required pursuant to paragraph 30, Respondent shall pay to the United States a stipulated penalty of \$500 for each day of noncompliance until the documentation is submitted.
40. Respondent shall pay any stipulated penalties that accrue under paragraph 34 and 35 within 30 days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in paragraph 26 and 27.
41. Any formal public statement, whether 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 an alleged violation of Section 6(e) of TSCA, 15 U.S.C § 2605".
42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
43. This CAFO shall be binding upon the Respondent, its successors and assigns.
44. 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.

#### **VI. Effective Date**

45. 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:**           **Graftech International Holdings, Incorporated**

**Docket No.:**           **TSCA-04-2009-2900(b)**

By:  (Signature) Date: 01-13-2010

CAB


Name: Petrus J. Barnard \_\_\_\_\_ (Typed or Printed)

Title: Vice President \_\_\_\_\_ (Typed or Printed)

**Corporate Office**

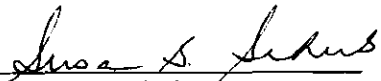
Graftech International Holdings, Inc.  
12900 Snow Road  
Parma, Ohio 44130

**Complainant:**       **U.S. Environmental Protection Agency**

By:  Date: 2/11/2010

G. Alan Farmer  
Director  
RCRA Division  
61 Forsyth Street SW  
Atlanta, Georgia 30303

**APPROVED AND SO ORDERED** this 22<sup>nd</sup> day of Feb., 2010.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

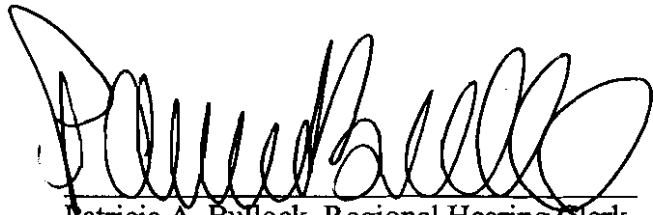
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Graftech International Holdings Incorporated, Docket Number: TSCA-04-2009-2900(b), to the addressees listed below.

Ms. Juanita M. Bursley (via Certified Mail, Return Receipt Requested)  
Senior Manager, Corporate Environmental Protection  
Graf Tech International Holdings, Incorporated  
12900 Snow Road  
Parma, Ohio 44130

Robert Caplan (via EPA's internal mail)  
Senior Attorney  
U.S. EPA, Region 4  
61 Forsyth, St., SW  
Atlanta, Georgia 30303

Tammye Cross, PCB Coordinator (via EPA's internal mail)  
RCRA and OPA Enforcement  
and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth, St., SW  
Atlanta, Georgia 30303

Date: 2-25-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, Georgia 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 2/18/10  
(Name) (Date)

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

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                      | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                              | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|  | <input type="checkbox"/> This is a modification  |

PAYEE: Graftech International Holdings  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4100  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2900 (6)

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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>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<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|