

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
July 1
2009 JUN 31 AM 7:37

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: § DOCKET NO. TSCA-06-2009-6112
 §
CITY OF NATCHITOCHEs § COMPLAINT
NATCHITOCHEs, LOUISIANA § AND
 § CONSENT AGREEMENT
 § AND
RESPONDENT § FINAL ORDER
 §

I. STATEMENT OF AUTHORITY

This proceeding for the assessment of civil penalties initiated by the United States Environmental Protection Agency (EPA) pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615, against the City of Natchitoches, Louisiana (hereinafter Respondent), is simultaneously commenced and concluded by the issuance of this Complaint and Consent Agreement and Final Order (Complaint and CAFO) pursuant to 40 C.F.R. § 22.13(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6, who is the person to whom authority has been delegated to issue such Complaints in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

II. PRELIMINARY STATEMENT

1. Complainant and Respondent agree that settlement of this matter is in the public interest, and that entry of this Complaint and CAFO without further litigation is the most appropriate means of resolving this matter.

2. Respondent admits the jurisdictional allegations of this Complaint and CAFO; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this Complaint and CAFO. The Complaint states a claim upon which relief can be granted.

3. For purposes of settlement, Respondent expressly waives its rights to request a hearing on any issue of law or fact set forth herein and waives all defenses which have been raised or could have been raised to the claims set out in this Complaint and CAFO.

4. This Complaint and CAFO resolves the violations alleged herein.

5. For purposes of settlement, Respondent consents to: A) the issuance of this Complaint and CAFO hereinafter recited; B) the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO; and C) the removal from service and proper disposal of its four (4) PCB Transformers identified in Paragraph 14.

6. By signature on this CAFO, Respondent waives any right to appeal the proposed final order accompanying this Complaint and CAFO.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent, the City of Natchitoches, Louisiana, is a municipality located in Natchitoches Parish, organized under the laws of the State of Louisiana and authorized to conduct business in Louisiana.

8. Respondent is a "person" as that term is defined in 40 C.F.R. § 761.3, and as such is subject to 40 C.F.R. Part 761.

9. On or about May 31, 2002, Respondent was conducting its business as a municipal owned utility system consisting of the electrical generation power plant, electrical distribution and transmission systems, the water and sewer distribution and collection and treatment facilities.

10. Respondent's utility department is located at 1110 Power Plant Drive, Natchitoches, Louisiana.

11. Respondent began operations as a municipal owned utility system in 1901.

12. On or about May 14, 2002, Respondent was informed by a representative of EPA Region 6, Ms. Lou Roberts, Regional PCB Coordinator, that 40 C.F.R. § 761.30(a)(1)(vi)(A) requires the registration of PCB Transformers with EPA; 40 C.F.R. § 761.30(a)(1)(xii) requires records of inspection and maintenance history be maintained on PCB Transformers; and 40 C.F.R. § 761.180(a) requires preparing and maintaining an Annual Document Log.

13. On or about May 31, 2002, Respondent sent a letter to EPA providing the details of its non-compliance with 40 C.F.R. Part 761, in accordance with EPA's revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (65 Fed. Reg. 19618, April 11, 2000) (Audit Policy).

14. Since 1971, Respondent has had in use four (4) PCB Transformers, containing approximately 8,540.9 kg of oil, identified as:

	<u>Manufacturer</u>	<u>Serial Number</u>	<u>Type of Dielectric Fluid</u>	<u>Kilograms</u>
1.	Westinghouse	YAP71081	Inerteen	929.8
2.	Westinghouse	VCP57361	Inerteen	4,490.5
3.	Westinghouse	71F9035	Inerteen	2,190.8
4.	Westinghouse	YAP71082	Inerteen	929.8

15. Respondent had inspected its four (4) PCB Transformers on an hourly basis for some years, but had not, as of May 14, 2002, registered these with EPA; prepared inspection and maintenance (I&M) records; and prepared any Annual Document Logs.
16. All of the aforementioned PCBs and PCB Items are located on the premises of the Respondent and in its possession and control.
17. "PCB" or "PCBs" is defined in 40 C.F.R. § 761.3 as 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.
18. "PCB Transformer" is defined in 40 C.F.R. § 761.3 as any transformer that contains 500 ppm (parts per million) PCB or greater.
19. "Inerteen" is the trade name used by Westinghouse to denote dielectric fluid which contains polychlorinated biphenyls (PCBs) in concentrations of 500 parts per million (ppm) or greater.
20. The four (4) transformers in use as identified in Paragraph 14 are "PCB Transformers" as that term is defined in 40 C.F.R. § 761.3.
21. The four (4) PCB Transformers in use as identified in Paragraph 14 have been in use by Respondent since 1971.
22. "PCB Article" 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.
23. "PCB Item" is defined in 40 C.F.R. § 761.3 as any PCB Article, PCB Article Container, PCB Container, or PCB Equipment, that deliberately or unintentionally contains or has a part of it any PCB or PCBs.

24. The four (4) PCB Transformers identified in Paragraph 14 are "PCB Articles" and "PCB Items" as those terms are defined in 40 C.F.R. § 761.3.
25. 40 C.F.R. § 761.30 authorizes the use of PCBs in transformers subject to certain conditions.
26. 40 C.F.R. § 761.30(a)(1)(vi)(A) requires that no later than December 28, 1998, all PCB Transformers must be registered with EPA.
27. On or about May 14, 2002, Respondent had not registered its four (4) PCB Transformers with EPA, in violation of 40 C.F.R. § 761.30(a)(1)(vi)(A).
28. On or about May 24, 2002, Respondent sent EPA Form 7720-12, "PCB Transformer Registration," to EPA registering its four (4) PCB Transformers.
29. 40 C.F.R. § 761.30(a)(1)(ix) states that a visual inspection of each PCB Transformer in use or stored for reuse shall be performed at least once every 3 months. These inspections may take place any time during the 3-month periods: January-March, April-June, July-September, and October-December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer.
30. 40 C.F.R. § 761.30(a)(1)(xii) states that records of inspection and maintenance history shall be maintained at least 3 years after disposing of the transformer and shall be made available for inspection, upon request by EPA. Such records shall contain the following information for each PCB Transformer: (A) its location; (B) the date of each visual inspection and the date that leak was discovered, if different from the inspection date; (C) the person performing the inspection; (D) the location of any leak(s); (E) an estimate of the amount of dielectric fluid released from any leak; (F) the date of any cleanup, containment, repair, or replacement;

(G) a description of any cleanup, containment, or repair performed; (H) the results of any containment and daily inspection required for uncorrected active leaks; (I) record of the registration of PCB Transformer(s); and (J) records of transfer of ownership.

31. On or about May 14, 2002, Respondent had not prepared records of inspection and maintenance history for its four (4) PCB Transformers, in violation of 40 C.F.R.

§ 761.30(a)(1)(xii).

32. 40 C.F.R. § 761.180(a) states that each owner or operator of a facility using or storing at one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop, maintain and make available for inspection, all annual records and the written annual document log of the disposition of PCBs and PCB Items prepared by July 1 covering the previous calendar year.

33. On or about May 14, 2002, Respondent had not prepared PCB Annual Document Logs, in violation of 40 C.F.R. § 761.180(a).

34. The TSCA PCB regulations codified at 40 C.F.R. Part 761 are rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.

35. Failure or refusal to comply with any rule promulgated, or order issued, under Section 6 of TSCA, 15 U.S.C. § 2605, constitutes an unlawful act under Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

36. Therefore Respondent has violated Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), by failing to: 1) register its four (4) PCB Transformers with EPA by December 28, 1998, in violation of 40 C.F.R. § 761.30(a)(1)(vi)(A); 2) prepare and maintain and make available to EPA its records of inspection and maintenance history for its four (4) PCB Transformers, in violation of 40 C.F.R. § 761.30(a)(1)(xii); and 3) prepare PCB Annual Document Logs, in violation of 40 C.F.R. § 761.180(a), rules promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.

IV. PARTIES BOUND

37. The provisions of this Complaint and CAFO shall apply to and be binding upon the parties to this action, its officers, directors, agents, servants, authorized representatives, employees, successors, and assigns. The undersigned representative of each party to this Complaint and CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Complaint and CAFO and to execute and to legally bind that party to it.

V. TERMS OF SETTLEMENT

38. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and upon consideration of the entire record herein, including the above Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent's ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability and such other matters as justice may require, it is agreed that Respondent be assessed a civil penalty of Five Thousand Five Hundred Dollars (\$5,500).

39. The assessed penalty has taken into account the particular facts and circumstances of this case with specific consideration of EPA's "Polychlorinated biphenyls (PCB) Penalty Policy" effective April 19, 1990, a copy of which is enclosed with this Complaint and CAFO. This policy provides for a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

40. Respondent consents to the issuance of this CAFO hereinafter recited and consents for the purposes of settlement to the payment of the civil penalty cited herein and to the removal and proper disposal of its four (4) PCB Transformers as set forth in this Complaint and CAFO.

41. Within thirty (30) days of filing this Complaint and CAFO with the Regional Hearing Clerk, Region 6, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of Five Thousand Five Hundred Dollars (\$5,500), to:

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

with a phone number of (513) 487-2091 or (513) 487-2105.

For overnight mail (non-U.S. Postal Service, e.g., FedEx, Airborne, UPS), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

with a phone number of (314) 418-1028.

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

with a phone number of (412) 234-4381.

PLEASE NOTE: Docket Number TSCA-06-2009-6112 shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative Complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given to the appropriate Region. Respondent shall also send a simultaneous notice of such payment including a copy of the cashier's or certified check, and transmittal letter to the following:

Regional Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

Ms. Lou Roberts (6EN-HM)
Multimedia Enforcement Section
Hazardous Waste Enforcement Branch
Compliance Assurance & Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to this request will ensure proper credit is given when payment is received.

42. Failure to pay the assessed penalty, as set forth above, may subject Respondent to a civil action pursuant to Section 16(a) of TSCA. Section 16(a) of TSCA authorizes EPA to collect any unpaid portion of the assessed penalty plus interest.

43. Pursuant to 31 U.S.C. § 3177, 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 a civil or stipulated penalty if it is not paid by the date required.

44. If EPA does not receive payment within thirty (30) days of the due date, and the Respondent cannot provide evidence that payment was properly sent, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin per annum through the date of payment. If payment is overdue, EPA will also impose a late payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each

subsequent thirty (30) day period. Finally, EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the due date. Other penalties for failure to make a timely payment may also apply.

45. Respondent shall remove from service and send for proposer disposal its four (4) PCB Transformers identified above in Paragraph 14. The schedule is described in the scope of work (hereinafter, the "Scope of Work"), attached hereto and incorporated herein by reference.

46. The total expenditure for the removal and proper disposal of Respondent's four (4) PCB Transformers (hereinafter, the "Project") shall be not less than \$381,280 in accordance with the specifications set forth in the Scope of Work. Respondent shall provide Complainant with documentation of the expenditures made in connection with the Project.

47. (a) Respondent shall submit a Project Implementation Report to EPA within ninety (90) days of the effective date of this Complaint and CAFO. The Project Implementation Report shall contain the following information:

- (i) A detailed description of all steps taken by Respondent to implement the Project;
- (ii) A description of any operating or logistical problems encountered and the solutions to date; and
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks or by other appropriate documentation.

(b) Respondent shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein.

(c) Respondent agrees that failure to submit the Project Implementation Report or any additional reports required by subsections a) or b) above and the Scope of Work shall be deemed

a violation of this Complaint and CAFO, and Respondent shall become liable for stipulated penalties pursuant to Paragraph 53 herein.

48. Respondent shall submit a Project Completion Report to EPA within thirty (30) days after completion of the Project. The Project Completion Report shall contain the following information:

- (a) A detailed description of the Project as finally implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or canceled checks or by other appropriate documentation.
- (c) Certification that the Project has been fully implemented pursuant to the provisions of this Complaint and CAFO; and
- (d) A description of the environmental and public health benefits resulting from implementation of the Project (with a quantification of the benefits and pollutant reductions, if feasible).

49. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the Project is operating properly and in conformity with the representations made herein.

50. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Complaint and CAFO, and Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the Project Implementation Report and Project Completion Report, submitted to EPA pursuant to this Complaint and CAFO, Respondent shall, by its officers or its appropriate responsible designee, sign and certify under penalty of law that the information

contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

51. Following receipt of the Project Completion Report described in Paragraph 48 above, EPA will do one of the following:

- (a) accept the Project Completion Report;
- (b) reject the Project Completion Report, notify the Respondent in writing of deficiencies in the Project Completion Report, and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- (c) if said deficiencies are not corrected, reject the Project Completion Report and seek stipulated penalties in accordance with Paragraph 53 herein.

52. If EPA elects to exercise the option in Paragraph 51(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to Paragraph 51(b) within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any

reasonable requirements within the anticipated budget of the proposed Project imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Complaint and CAFO. In the event the Project is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 53 herein.

53. (a) In the event that Respondent fails to comply with any of the terms or provisions of this Complaint and CAFO relating to the performance of the Project described in Paragraph 45 above and/or to the extent that the actual expenditures for the Project do not equal or exceed the cost of the Project described in Paragraph 46 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a Project which has not been completed satisfactorily pursuant to Paragraph 45 including the Scope of Work, Respondent shall pay a stipulated penalty to the United States in the amount of \$95,320.
- (ii) If the Project is not completed satisfactorily pursuant to Paragraph 45, but the Complainant determines that the Respondent made good faith and timely efforts to complete the Project and Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the Project, Respondent shall not pay any stipulated penalty.
- (iii) If the Project is completed in accordance with Paragraph 45, but the Respondent spent less than 90 percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$9,532.
- (iv) If the Project is completed in accordance with Paragraph 45, and Respondent spent at least 90 percent (90%) of the amount of money required to be spent for the Project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the Project Implementation Report required by Paragraph 47 above, Respondent shall pay a stipulated penalty in the amount of Five Hundred Dollars (\$500) for each day after the report was originally due until the report is submitted.

(vi) For failure to submit any other report required by Paragraph 47 above or the Scope of Work, Respondent shall pay a stipulated penalty in the amount of Two Hundred Dollars (\$200) for each day after the report was originally due until the report is submitted.

(b) The determination of whether the Project has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the Project shall be in the sole discretion of EPA. Compliance with terms of this Complaint and CAFO shall be defined to be consistent with the Scope of Work. EPA agrees to notify Respondent of any deficiencies within thirty (30) days of completion and Respondent shall have thirty (30) days to correct said deficiencies.

(c) Stipulated penalties for subparagraphs (a)(v) and (a)(vi) above shall begin to accrue on the day after the report was originally due, and shall continue to accrue through the day the report is submitted.

(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 41 above. Interest and late charges shall be paid as stated in Paragraph 44 herein.

(e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

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

the settlement of an enforcement action taken by EPA for alleged violations of 40 C.F.R. Part 761, a rule promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605.”

55. (a) If any event occurs which causes or may cause delays in the completion of the Project as required under this Complaint and CAFO, Respondent shall notify Complainant in writing within ten (10) days of the delay or Respondent’s knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent’s right to request an extension of its obligation under this Complaint and CAFO based on such incident.

(b) If the parties agree that the delay or anticipated delay in compliance with this Complaint and CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

(c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Complaint and CAFO has been or will be caused by circumstances beyond

the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the Project shall not be excused.

(d) The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Complaint and CAFO shall not, in any event, be a basis for changes in this Complaint and CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not justify or excuse delay in achievement of subsequent steps, unless specifically excused.

56. If Respondent objects to any decision or directive of EPA regarding the acceptance of the Project Completion Report and/or the satisfactory completion of the Project as provided for by this Complaint and CAFO, Respondent shall notify the Associate Director of the Hazardous Waste Enforcement Branch of the Compliance Assurance and Enforcement Division (the "Associate Director"), in writing, of its objections and the basis for those objections within fifteen (15) calendar days of receipt of EPA's decision or directive. The Associate Director, or his designee, and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute. If no agreement is reached between the Associate Director, or his designee, and the Respondent within that time period, the dispute shall be submitted to the Division Director of the Compliance Assurance and Enforcement Division or the Division Director's designee. EPA and the Respondent shall then have a second fifteen (15) day period to resolve the dispute. If agreement is reached between the Division Director, or the Division Director's designee, and Respondent,

there solution shall be reduced to writing and signed by the Division Director and Respondent and incorporated into this Complaint and CAFO. If EPA and the Respondent are unable to reach agreement within this second fifteen (15) day period, the Division Director or his designee will provide a written statement of EPA's decision to Respondent, which will be binding and incorporated into this Complaint and CAFO.

VI. RETENTION OF ENFORCEMENT RIGHTS

57. Other than as provided herein, EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes or permitting programs.

58. Nothing in the CAFO shall relieve Respondent of the duty to comply with all applicable provisions of TSCA.

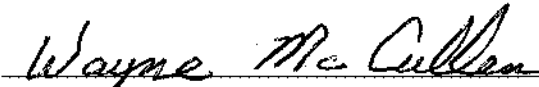
VII. COSTS

59. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

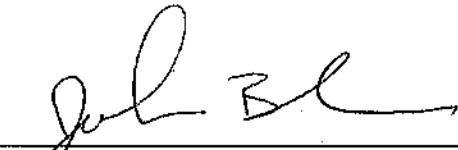
FOR THE RESPONDENT:

Date: 6-17-09


Wayne McCullen
Mayor
City of Natchitoches, LA

FOR THE COMPLAINANT:

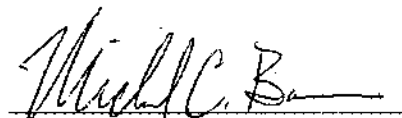
Date: 6/24/09


John Blevins
Director
Compliance Assurance and
Enforcement Division

VIII. FINAL ORDER

Pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement in Docket Number TSCA-06-6009-6112 is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. 40 C.F.R. § 22.31(b) provides that this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: June 30, 2009



Michael C. Barra
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July 2009, the original of the foregoing Complaint and Consent Agreement and Final Order (Complaint and CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and CAFO and the PCB Penalty Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Wayne McCullen
Mayor
City of Natchitoches
700 Second Street
Natchitoches, LA 71457

receipt number 7004 0750 0000 1695 6899

Lou Roberts

Lou Roberts
Environmental Protection Specialist

ATTACHMENT

SCOPE OF WORK

I. SCHEDULE OF ACTIVITIES

A. Respondent is to remove from service and send for proper disposal its four (4)

PCB Transformers identified as:

	<u>Manufacturer</u>	<u>Serial Number</u>	<u>Type of Dielectric Fluid</u>	<u>Kilograms</u>
1.	Westinghouse	YAP71081	Inerteen	929.8
2.	Westinghouse	VCP57361	Inerteen	4,490.5
3.	Westinghouse	71F9035	Inerteen	2,190.8
4.	Westinghouse	YAP71082	Inerteen	929.8

B. The removal from service shall be completed no later than September 30, 2011.

C. All PCBs and PCB Items designated for disposal per this Scope of Work shall be sent for proper disposal no later than September 30, 2011.

D. REPORTS

1. Project Implementation Report: Respondent shall submit this document in accordance with the terms of Paragraph 47 of the Complaint and CAFO to EPA within 90 days after the effective date of the Complaint and CAFO. This document shall contain the information identified in Paragraph 47(a) of this Complaint and CAFO.

2. Status Reports: Respondent shall submit a status report to EPA every ninety (90) days after receipt of the Project Implementation Report for the length of the Project. Respondent shall include cost documentation with each status report. The cost documentation shall include purchase orders, invoices and related correspondence, an independent auditing, or other equivalent proof of expenditures. For personnel costs, this shall include copies of pay statements or other equivalent forms of proof of expenditures.

3. Project Completion Report: A Project Completion Report as identified in Paragraph 48 of this Complaint and CAFO shall be submitted within thirty (30) days after completion of the Project, and no further status reports need be submitted by Respondent. The Project Completion Report shall include all final costs associated with completion of the Project. The Project Completion Report shall provide for closure of the Project as specified in Paragraph 51. EPA shall not unreasonably withhold approval of this report.

4. The Project Implementation Report, Status Reports, and the Project Completion Report must be signed by the Utility Director or appropriate designee and contain the language identified in Paragraph 50 of the Complaint and CAFO. The reports shall be sent

to: Ms. Lou Roberts (6EN-HM)
Multimedia Enforcement Section
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

II. REGULATORY REQUIREMENTS

A. Replacement: Each PCB Transformer which is removed from service and disposed of as recited above will be replaced with a transformer that does not contain PCBs (less than 1 ppm).

B. Storage: All PCBs and PCB Items containing a PCB concentration of 50 ppm and greater which are designated for disposal will be stored in accordance with the requirements of 40 C.F.R. § 761.65.

C. Marking: All PCBs and PCB Items containing a PCB concentration of 50 ppm and greater which are designated for disposal will be marked in accordance with the requirements of 40 C.F.R. § 761.40.

D. Recordkeeping: Respondent will prepare, maintain and make available to EPA for inspection any records required by 40 C.F.R. Part 761 concerning the removal from service of its PCB Transformers, storage for disposal of PCBs and PCB Items, and disposal and manifesting of its PCBs and PCB Items.

E. In carrying out the activities identified in Section I. A. and D. of this Scope of Work, Respondent shall comply with all relevant provisions of 40 C.F.R. Part 761.

III. COSTS

The costs allowable towards the \$381,280 set forth in Paragraph 46 of this Complaint and CAFO must be specifically allocated to the removal and replacement of the aforementioned four (4) PCB Transformers.