



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

JUN 11 2012

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Article Number: 7011 0470 0002 3731 9258

Re: In the Matter of Feldmeier Equipment, Inc.  
Docket No. TSCA-02-2012-9202

Mr. Robert Feldmeier, Jr.  
President  
Feldmeier Equipment, Inc.  
575 East Mill Street  
Little Falls, NY 13365

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2012 JUN 14 A 9:02  
REGIONAL HEARING  
CLERK

Dear Mr. Feldmeier:

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 or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Vickie Pane of my staff at (732) 321-6798 or by electronic mail at [pane.vickie@epa.gov](mailto:pane.vickie@epa.gov), should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
In the Matter of :  
Feldmeier Equipment, Inc., :  
Respondent. :  
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act. :  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2012-9202

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JUN 14 A 9:02  
REGIONAL HEARING  
CLERK

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 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Feldmeier Equipment, Inc. (hereinafter "Respondent") violated Section 6(e) of 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).

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Respondent is Feldmeier Equipment, Inc.
2. Respondent owns, operates, and/or controls the facility in and around 575 East Mill Street, Little Falls, New York (hereinafter "Respondent's facility").
3. On or about May 19, 2010, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. As a result of the inspection, EPA determined that Respondent failed to mark the means of access to PCB Transformers with the PCB mark  $M_L$  in accordance with the specifications and requirements of 40 C.F.R. § 761.40(j)(1).
5. As a result of the inspection, EPA determined that Respondent failed to remove combustible materials stored within 5 meters of a PCB Transformer in accordance with the specifications and requirements of 40 C.F.R. § 761.30(a)(1)(viii).
6. As a result of the inspection, EPA determined that Respondent failed to develop and maintain annual documents on the disposition of PCBs and PCB Items in accordance with the specifications and requirements of 40 C.F.R. § 761.180(a).
7. On or about October 25, 2011, Complainant sent to Respondent a "Notice of Opportunity with Respect to Action Under The Toxic Substances Control Act", which alleged that Respondent had violated the PCB regulations at 40 C.F.R. Part 761.
8. On November 10, 2011, the parties met for an informal settlement conference.

#### CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, 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 the means of access to PCB Transformers with the PCB mark M<sub>L</sub> is a violation of 40 C.F.R. § 761.40(j), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).
4. Failure to remove combustible materials stored within 5 meters of PCB Transformers is a violation of 40 C.F.R. § 761.30(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).
5. Failure to compile and maintain records and annual documents on the disposition of Respondent-owned PCBs and PCB Items is a violation of 40 C.F.R. § 761.180(a), 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 at 40 C.F.R. Part 22, 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 that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWENTY SEVEN THOUSAND TWO HUNDRED FORTY EIGHT DOLLARS**

**(\$27,248)** 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 made 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, 16<sup>th</sup> Floor  
New York, NY 10007

and

Vickie Pane, Environmental Engineer  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, NJ 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 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 120 days of receiving a copy of this Agreement signed by the Regional Administrator, Respondent shall remove and properly dispose of 56 PCB Capacitors. Respondent shall complete the SEP as follows:

- 32 PCB Capacitors located within the second floor PCB Transformer vault shall be disconnected and properly packaged for disposal.
- 24 PCB Capacitors located on the fourth floor shall be disconnected and properly packaged for disposal.
- All 56 PCB Capacitors shall be properly manifested and transported for appropriate disposal.

5. The total expenditure for the SEP shall be not less than **\$42,759** in accordance with the specifications set forth in the attached proposal.

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.

7. Respondent certifies that it will not claim as a deduction or charitable contribution or capitalize or otherwise take any credit for the purposes of federal, state, or local taxes for the monies expended in the performance of the SEP pursuant to paragraph 5, above.

8. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the removal and proper disposal of 56 PCB Capacitors as herein required shall be the sole determination of EPA.

9. (a) Respondent shall submit a SEP Completion Report to EPA no later than seven months from the date of this Consent Agreement. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

(b) Respondent shall submit copies of Certificates of Disposal to the EPA staff member at the address cited in paragraph 3, above, within one year of the date the PCB Capacitors are sent for disposal.

(c) Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections (a) and (b) 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) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 4, Respondent shall pay a stipulated penalty to the United States in the amount of \$ **34,207** (100% of the amount by which the settlement penalty was reduced in consideration of the SEP).

(ii) If the SEP is not completed satisfactorily, but Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent 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 \$ **8,552** (25% of the amount by which the settlement penalty was reduced in consideration of the SEP).

(iv) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by paragraph 9 above, Respondent shall pay a stipulated penalty in the amount of \$**100** for each day after 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 the sole discretion of EPA.

(c) Stipulated penalties for subparagraphs (iv) and (v) 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 herein.



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

12. (a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing within 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 delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize 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 Respondent's right to request an extension of its obligation under this Agreement based on such incident.

(b) If the parties agree that the delay or anticipated delay in compliance with this Agreement 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 Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

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

paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

13. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder in 40 C.F.R. Part 761, that attach or might have attached as a result of the “Findings of Fact” section, above, and the allegations contained in the “Conclusions of Law” section, above. 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.

14. 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.

15. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the “Findings of Fact” section, above, and the allegations contained in the “Conclusions of Law” section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

16. 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.

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

18. 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.

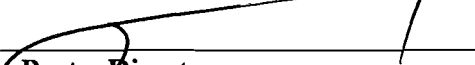
20. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BY:   
Feldmeier Equipment, Inc.

NAME: ROBERT E FELDMEIER  
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 5/11/12

COMPLAINANT: 

Dore I. Posta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway  
New York, New York 10007

DATE: JUNE 5, 2012

In the Matter of Feldmeier Equipment, Inc.  
Docket Number TSCA-02-2012-9202

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Feldmeier Equipment, Inc., bearing Docket Number TSCA-02-2012-9202. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: June 6 2012

Judith A. Enck

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

**ATTACHMENT 1  
FELDMEIER EQUIPMENT, INC.  
DOCKET # TSCA-02-2012-9202**

575 East Mill St.  
Little Falls, NY 13365

Phone: (315) 823-2000  
Fax: (315) 823-5012

Feldmeier

March 16, 2012

Vickie L. Pane  
U.S. EPA Region II  
DECA-PTSB-Toxic Substances  
2890 Woodbridge Avenue  
Building 10 (MS-105)  
Edison, NJ 08837

RE: Feldmeier SEP Proposal

Dear Ms. Pane:

Feldmeier Equipment would like to proceed with removal of (56) PCB Capacitors from our facility in Little Falls, NY. Per our settlement conference we are submitting this proposal for EPA's consideration to determine if it qualifies as a SEP and how much penalty mitigation is appropriate.


Based on the included proposal which we received from Grainger / Schneider Electric we intend to eliminate the (32) PCB Capacitors on the Second Floor and the (24) PCB Capacitors on the Fourth Floor of our facility. The breakdown of costs associated with this work is as follows:

- Removal Costs - \$11,342.00
- Transportation Costs - \$ 2,000.00
- Disposal Costs - \$29,417.00
- **Total - \$42,759.00**

The (56) Capacitors which will be removed are GE #16F14 and contain approximately 504.6 kg of Pyranol. This work would be complete within (15) weeks from response to this proposal.

Please do not hesitate to contact me with any concerns or recommendations.

Sincerely,



Kyle Brown

General Manager - Little Falls Facility


CC: Robert Feldmeier, Jr.

In the Matter of Feldmeier Equipment, Inc.  
Docket Number TSCA-02-2012-9202

**CERTIFICATE OF SERVICE**

This is to certify that on the *11* day of *June* 2012, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2012-9202, by certified mail, return receipt requested, to: Mr. Robert Feldmeier Jr., President, Feldmeier Equipment, Inc., 575 East Mill Street, Little Falls, New York, 13365.

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.

  
\_\_\_\_\_