

1.3 In accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, Complainant hereby issues, and City of Tacoma (“Respondent”) hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA to sign consent agreements between EPA and the party against whom a civil penalty is proposed to be assessed. 15 U.S.C. § 2615(a).

2.3 Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA, together with the specific provisions of TSCA and implementing regulations that Respondent is alleged to have violated.

2.4 Respondent has entered into this CAFO without admitting or denying liability for the alleged violations in order to resolve this matter without litigation and to avoid unnecessary disruption to its solid waste management operations.

III. ALLEGATIONS

3.1 Respondent is a first-class city under the laws of the state of Washington, and is a “person” as defined at 40 C.F.R. § 761.3.

3.2 At all times relevant to the alleged violations, Respondent owned and operated a landfill and recycling center located at 3510 South Mullen Street, Tacoma, Washington (“Tacoma Landfill Facility”). The Tacoma Landfill Facility is a “facility” as defined at 40 C.F.R. § 761.3.

3.3 Respondent reported that since the early 1990s, Respondent has collected used oil from the public at no charge.

3.4 On May 4, 2012, Emerald Services collected approximately 750 gallons of used oil from Respondent at the Tacoma Landfill Facility and transported the used oil to one of its recycling and processing facilities located at 1500 Airport Way South, Seattle, Washington (“Seattle Facility”).

3.5 Prior to collection of the used oil from the Tacoma Landfill Facility on May 4, 2012, Emerald Services conducted a Chlor-D-Tect test to detect the presence of chlorine in the used oil; none was detected.

3.6 On or about May 9, 2012, Emerald Services completed an internal laboratory screening of storage tanks at the Seattle Facility that contained bulk collections of used oil from multiple sources, including the used oil collected from Respondent. The internal laboratory screening identified the presence of the Polychlorinated Biphenyl (“PCB”) Arochlor 1242 in a storage tank at the Seattle Facility.

3.7 Emerald Services conducted additional screening of samples retained from individual collections of used oil and identified Respondent as the likely source of the PCBs. On or around May 11, 2012, Emerald Services collected samples from the used oil storage tank at

the Tacoma Landfill Facility. These samples contained the PCB Arochlor 1242 at concentrations greater than 50 parts per million (“ppm”).

3.8 Pursuant to 40 C.F.R. § 761.60(a), PCB liquids at concentrations equal to or greater than 50 ppm are subject to the disposal regulations at 40 C.F.R. Part 761. The used oil collected from the Tacoma Landfill Facility on May 11, 2012, contained PCBs at a concentration above 50 ppm and therefore is subject to the disposal requirements at 40 C.F.R. Part 761, Subpart D.

3.9 A “generator of PCB waste” is defined at 40 C.F.R. § 761.3 as any person whose act or process produces PCBs regulated for disposal, whose act first causes PCBs to become regulated for disposal, or who has physical control over the PCBs when the decision is made to terminate the use of the PCBs. In the course of its waste disposal and recycling operations, Respondent managed used oil containing PCBs which was stored for collection by Emerald Services for recycling, reprocessing, or energy recovery of the used oil. Respondent is a generator of PCB waste in the situation alleged in this CAFO because it had physical control over the PCBs in the used oil that was offered to and collected by Emerald Services on May 4, 2012.

Alleged Violation 1

(Failure to Notify EPA of PCB Waste Handling Activities)

3.10 40 C.F.R. § 761.205(a)(2) requires a generator of PCB waste to notify EPA of PCB waste handling activities by filing EPA Form 7710-53.

3.11 Respondent is a generator of PCB waste that failed to notify EPA of waste handling activities by filing EPA Form 7710-53, in violation of 40 C.F.R. § 761.205(a)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

Alleged Violation 2

(Failure to Prepare a PCB Waste Manifest)

3.12 40 C.F.R. § 761.207(a) requires a generator of PCB waste who relinquishes control over PCB waste by transporting or offering the PCB waste for transport to prepare a PCB waste manifest.

3.13 Respondent is a generator of PCB waste and relinquished control of the PCB waste by offering the PCB waste to Emerald Services for transportation without preparing a PCB waste manifest, in violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Alleged Violation 3

(Distribution of PCBs in Commerce)

3.14 40 C.F.R. § 761.20(c) prohibits any person from distributing PCBs in commerce within the United States unless the person complies with the applicable provisions of 40 C.F.R. Part 761, and the distribution is subject to an exemption or related to an excluded manufacturing process.

3.15 Respondent distributed PCBs to Emerald Services in the course of commerce without complying with the applicable provisions of 40 C.F.R. Part 761, without an exemption, and unrelated to an excluded manufacturing process, in violation of 40 C.F.R. § 761.20(c) and Section 15 of TSCA, 15 U.S.C. § 2614.

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in Paragraphs 3.1, 3.2, 3.8, and 3.9 of this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations set forth in Part III of this CAFO.

4.3 As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, and Respondent's degree of culpability, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$40,000.

4.4 Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 calendar days of the effective date of the Final Order.

4.5 Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to one of the following addresses based on the method of delivery:

By U.S. Postal Mail:

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

By UPS, Federal Express, or overnight mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
St. Louis, MO 63101
314-418-1028

Respondent must note on the check Respondent's name and address, the case name, and the docket number of the case.

4.6 Respondent must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Tristen Gardener
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7 If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), together with interest. In any such collection action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

4.8 The penalty described in Paragraph 4.3, including any interest incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9 The undersigned representative of Respondent certified that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10 Each party shall bear its own fees and costs in bringing or defending this action.

4.11 Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO. Respondent expressly

waives the notice requirement and its opportunity to request a hearing on the order pursuant to Section 16(a)(2), 15 U.S.C. § 2615(a)(2).

4.12 Respondent's compliance with the terms of this CAFO shall fully and finally settle all civil claims and civil causes of action EPA could assert against the Respondent for the violations alleged in Part III.

4.13 Respondent's obligations under this CAFO shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Part IV of this CAFO.


4.14 The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

4.15 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/28/2013

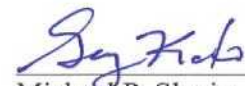
FOR RESPONDENT:



T.C. Broadnax
City Manager

DATED:


8-28-13

for 

Michael P. Slevin, III, P.E.
Director, Environmental Services Department

DATED:

8-28-2013



Andrew Cherullo
Finance Director

DATED:

8/28/13



Deborah Dahlstrom
Risk Manager

ATTEST FOR RESPONDENT:

DATED:

 8-29-2013

Doris Sorum
City Clerk

APPROVED AS TO FORM FOR RESPONDENT:

DATED:

8-27-13



Doug Mbsich
Deputy City Attorney

DATED:

9/13/2013

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1 The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

5.2 This CAFO constitutes a complete and final settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

5.3 Respondent shall pay a civil penalty in the amount of \$40,000, as provided in Part IV above.

5.4 This Final Order is effective upon filing.

SO ORDERED this 20th day of September, 2013.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: City of Tacoma Docket No.: TSCA-10-2013-0151** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

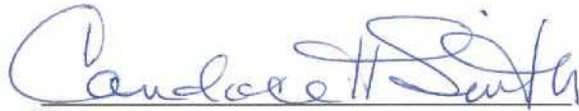
The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Gary Kato
Assistant Division Manager
Public Works Department, Solid Waste Division
City of Tacoma
3510 South Mullen Street
Tacoma, Washington 98409

DATED this 23rd day of Sept, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

