



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. Janice Tomblinson
Vice President Human Resources
316 East 9th Street
Owensboro, Kentucky 42303

SUBJ: Consent Agreement and Final Order - Docket No. TSCA-04-2009-2913
MPD, Inc.

Dear Ms. Tomblinson:

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 paragraph 23 of the CAFO, the assessed penalty of \$1,425 is due within 30 days from 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 and submitted in accordance with paragraphs 24 and 25 of the CAFO.

Should you have any questions about this matter, please feel free to contact me at (404) 562-8976 or William Kappler at (404) 562-8498.

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

cc: Duke York, KYDEP

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
MPD, Inc.)
316 East 9th Street)
Owensboro, Kentucky 42303)
)
Respondent)
_____)

Docket No. TSCA-04-2009-291

HEARING CLIENT
2010 FEB 25 PM 12:32
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EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource, Conservation and Recovery Act Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is MPD, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

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

William Kappler
North Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

III. Specific Allegations

6. On or about August 19, 2008, an inspection was conducted by the Kentucky Department for Environmental Protection (KYDEP) at Respondent's facility located at 316 East 9th Street, in Owensboro, Kentucky (the facility), to determine compliance with regulations found at 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyl (PCBs). The PCB regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).
7. Respondent is a user of PCB Items and is a "person" as defined in 40 C.F.R. § 761.3.
8. Pursuant to 40 C.F.R. § 761.3, PCB and PCBs mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
9. Pursuant to 40 C.F.R. § 761.3, PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
10. Pursuant to 40 C.F.R. § 761.3, PCB Article means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes but is not limited to transformers.
11. Pursuant to 40 C.F.R. § 761.3, PCB Transformer means any transformer that contains >500 ppm PCBs.
12. Pursuant to 40 C.F.R. § 761.180(a), each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any 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 and maintain at the facility, or a central facility provided they are maintained at that facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items.
13. Pursuant to 40 C.F.R. § 761.180(a)(2), the written annual document log shall include, among other things: the dates that PCB Articles were removed from service, the unique manifest number of every manifest generated by the facility during the calendar year.

14. At the time of the inspection, Respondent was not maintaining complete annual records for PCB transformers and PCB capacitors as required by 40 C.F.R. § 761.180(a). In particular, Respondent's records did not include the following required information: the date that two capacitors had been removed from service for disposal and the corresponding manifest number of the items. Therefore, Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 761.180(a).

IV. Consent Agreement

15. 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.
16. 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.
17. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of Section 6(e) of TSCA.
19. 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.
20. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

V. Terms of Settlement

21. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), the nature of the alleged violation, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **ONE THOUSAND FOUR HUNDRED TWENTY FIVE Dollars (\$1,425)**.
22. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty as cited in the foregoing paragraph set forth herein.

VI. Final Order

23. Respondent is assessed a civil penalty of **ONE THOUSAND FOUR HUNDRED TWENTY FIVE Dollars (\$1,425)** which shall be paid within 30 days from the effective date of this CAFO.
24. 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
MPD, Inc. and Docket Number TSCA-04-2009-2913.**

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

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

Contact: Natalie Pearson (314) 418-4087

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

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

William Kappler
North Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

And

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

26. 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.
27. 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.
28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
29. This CAFO shall be binding upon the Respondent, its successors and assigns.
30. 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.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

VII. Effective Date

31. 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: MPD, Inc
Docket No.: TSCA-04-2009-2913

By: Janice S. Tomblinson (Signature) Date: 1/21/2010

Name: Janice S. Tomblinson (Typed or Printed)

Title: Vice President-Human Resources (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: G. Alan Farmer Date: 2/11/2010
G. Alan Farmer
Director
RCRA Division

APPROVED AND SO ORDERED this 22nd day of February, 2010.

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

Docket No. TSCA-04-2009-2913

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of MPD, Inc., Docket No. TSCA-04-2009-2913 (filed with the Regional Hearing Clerk) on _____, 2010 was served on _____, 2010 in the manner specified to each of the persons set forth below:

Ms. Janice Tomblinson
Vice President Human Resources
MPD, Inc.
316 East 9th Street
Owensboro, Kentucky 42303

Certified Mail
Return Receipt Requested

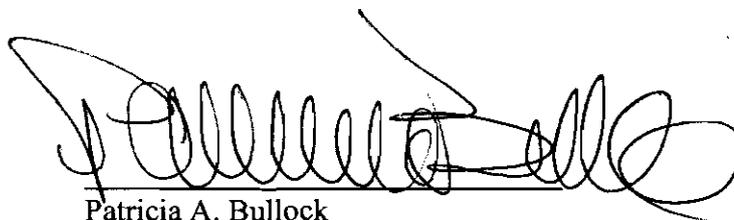
Robert Caplan, Senior Attorney
Environmental Accountability Division
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Via EPA's Internal Mail

William Kappler
RCRA & OPA Enforcement and Compliance
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Via EPA's Internal Mail

Date 2-25-10



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

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 2/17/10
(Name) (Date)

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

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
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: MPD Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1425-
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2913

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

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

DISTRIBUTION:

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

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

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

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