



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 14 2019

Gregory T. Young, Partner
Burr & Forman
222 Second Avenue South
Suite 2000
Nashville, Tennessee 37201

SUBJ: Tennessee Department of Education
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2903(b)

Dear Mr. Young:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above, and in the CAFO, should be noted on any cashier's or certified check submitted for payment of the penalty.

Should you or your client have any questions about this matter, or your client's compliance status in the future, please contact Robert Caplan at (404) 562-9520, or Kris Lippert at (404) 562-8605.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

OFFICE OF REGIONAL COUNSEL

2019 MAR 14 AM 8:57

HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ATLANTA, GEORGIA

In the Matter of:
The State of Tennessee Department of Education
Andrew Johnson Tower, 10 Floor
710 James Robertson Parkway
Nashville, Tennessee 37243
Respondent.

Docket No. TSCA-04-2018-2903(b)

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 Restoration Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is the State of Tennessee Department of Education (TN DOE).
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of the Resource Conservation and Restoration Division by EPA

Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Resource Conservation and Restoration Division has the authority to commence an enforcement Action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. 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

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). 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 civil penalty in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

5. Respondent is a "person" as defined in 40 C.F.R. § 761.3.
6. Respondent owns and operates the Tennessee School for the Deaf (the School) located at 2725 Island Home Boulevard, Knoxville, Tennessee.
7. Between the years of approximately 2014 and 2017, the School was undergoing a capital project involving demolition and renovation, and construction of a new high school and

infrastructure upgrades under the direction and management of the Tennessee Department of General Services, Real Estate Asset Management Division (TN DGS). In or about February 2016, E. Luke Greene (ELG), a subcontractor on the project who was involved in the demolition of Poore Hall at the School, removed a PCB transformer from the basement of the building and transported it to its facility where it was stored on a trailer located in an outside yard. Subsequently, ELG arranged for a sample of the transformer oil to be analyzed for PCBs and the results showed that the oil contained 1,390,000 ppm PCBs, thereby confirming that it was a PCB Transformer. ELG thereafter notified TN DGS that the transformer was a PCB transformer.

8. On or about May 10, 2016, TN DGS requested that its environmental consultant, Ensafe, investigate the transformer at ELG's property. On or after May 10, 2016, Ensafe contacted ELG and was advised that the transformer appeared to have leaked. Ensafe came to ELG's property the day after being advised about the possible leak and confirmed that the PCB transformer was leaking. Ensafe notified TN DGS about the leaking transformer and TN DGS in turn notified the National Response Center of the spill of PCBs.
9. After learning of the spill through review of the NRC report, the Tennessee Department of Environment and Conservation (TDEC) conducted an inspection at ELG's facility. Additionally, on May 26, 2016, TDEC, acting as authorized representative of the EPA, conducted an inspection at the School to determine Respondent's compliance with the PCB regulations.
10. During the inspection and further investigation, TDEC identified the following PCB equipment associated with the School:

- a. One (1) Westinghouse Inerteen PCB Transformer (Serial Number 654384Z) containing 116 gallons of PCB-contaminated oil at 1,390,000 parts per million (ppm) PCBs that had been removed from the basement of Poore Hall by subcontractor E. Luke Greene and transported to its facility. On July 16, 2016, this PCB Transformer and the PCB oil from the transformer was transported to Waste Management in Emelle, Alabama for disposal. TN DGS provided EPA with the hazardous waste manifest for the PCB Transformer (#003150533GBF). The manifest stated that the out-of-service date for the transformer was November 27, 2014.
 - b. One (1) Askarel Standard PCB Transformer (Serial Number MET-2256) located next to the Atkin Health and PE Building, containing 240 gallons of PCB oil with 600,000 ppm PCBs. This transformer was removed by another subcontractor, Bass Services, and transported to Bass's former facility sometime between May 2014 and February 2015, where it was stored in its outdoor gravel storage yard and eventually properly transported off-site to TCI of Alabama in Pell City, Alabama on or about May 15, 2017 for proper disposal.
 - c. One (1) 500-KVA General Electric pad mount PCB-Contaminated Transformer (Serial Number F531914-65P), containing 187 gallons of oil contaminated with 342 ppm of PCBs and located on the School property at one time. The out-of-service date for this PCB-Contaminated Transformer was October 2014. After the inspection, the School provided to TDEC a copy of a Certificate of Disposal for this transformer, dated March 9, 2015.
 - d. According to the August 2, 2011, Hazardous Materials Survey Report prepared by Quantum Environmental & Engineering Services, LLC, on behalf TN DGS, one (1) large transformer that serviced Cottage E at the School was located in the ground floor mechanical room (Room 17). The label indicated that it was a Westinghouse Inerteen PCB Transformer that held 128 gallons. No other documentation for this PCB Transformer has been found.
 - e. In 2017, Respondent provided the EPA with a list of transformers that had been supposedly on-site. Three (3) of the transformers on the list are presumed to have been PCB Transformers (containing ≥ 500 ppm PCBs) under the "assumption" criteria set out in 40 C.F.R. § 761.2. Respondent has not provided any other information on the following transformers, except that they were taken out of service in October 2014:
 - i. COOP 300 KVA Pad Mount: Serial # 12004066 installed around 1951 at Jones Vocational;
 - ii. 50 KVA Pad Mount installed around 1974 at Akin Health and PE; and
 - iii. 50 KVA Pad Mount installed around 1974 at Akin Health and PE.
11. During TDEC's May 26, 2016 inspection, the School was unable to provide written annual document logs including an inventory of PCB items, annual records, PCB

inspections, copies of manifests and Certificates of Disposal for the last 3 years. The School did not have an EPA Identification number for generating PCB waste, did not notify as a PCB Waste Handler and did not register any PCB Transformers with the EPA.

12. 40 C.F.R. § 761.2(a)(3) states that any person must assume that a transformer manufactured prior to July 2, 1979, that contains 1.36 kilograms (3 pounds) or more of fluid other than mineral oil and whose PCB concentration is not established, is a PCB Transformer (i.e., ≥ 500 parts per million). If the date of manufacture and the type of dielectric fluid are unknown, any person must assume the transformer to be a PCB Transformer.
13. 40 C.F.R. § 761.3 defines a PCB Transformer as any transformer that contains ≥ 500 parts per million (ppm) PCBs.
14. 40 C.F.R. § 761.3 defines PCB Items as 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.
15. 40 C.F.R. § 761.3 defines "PCB Waste" as those PCBs and PCB Items that are subject to the disposal requirements found in 40 C.F.R. Part 761, Subpart D.
16. Pursuant to 40 C.F.R. § 761.3, "Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of Part 761, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of Subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of Subpart D of this part.

17. 40 C.F.R. § 761.65(a)(1) requires that any PCB waste be disposed of as required by 40 C.F.R. Part 761, Subpart D within 1-year from the date it was determined to be PCB waste and the decision was made to dispose it. The hazardous waste manifest #003150533GBF for the Westinghouse Inerteen PCB Transformer, Serial Number 654384Z, described in paragraph 10(a) above, stated that the transformer was taken out of service on November 27, 2014, and shipped to Waste Management for disposal on July 8, 2016, which was more than 1 year after the transformer was determined to be PCB waste and a decision was made to dispose of it. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(a)(1).
18. 40 C.F.R. § 761.30(a)(1)(ix) requires visual inspections of each PCB Transformer in use or stored for reuse shall be performed at least once every 3 months. During the May 26, 2016, inspection at the School, no PCB Transformer inspections had been conducted for the previous 3 years. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.30(a)(1)(ix).
19. 40 C.F.R. § 761.180(a) requires 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 that they are maintained at that facility, all annual records and the written annual document log of the disposition of PCB and PCB Items. During the May 26, 2016, inspection at the School, annual document logs showing the disposition of PCBs and PCB Items were not being maintained by the School. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.180(a).

20. 40 C.F.R. § 761.214(a)(1) requires generators to keep a copy of each manifest signed in accordance with 40 C.F.R. § 761.210(a) for three years or until the generator has received a signed copy from the designated facility which received the PCB waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter. A generator subject to annual document requirements under 40 C.F.R. § 761.180 shall retain copies of each manifest for the period required by § 761.180(a)(1)(i). The Respondent has not provided a manifest for the following transformers that were described in paragraph 10 above: (1) the 500 KVA General Electric pad mount PCB-Contaminated Transformer (Serial Number F531914-65P), containing 187 gallons of oil contaminated with 342 ppm; (2) the Westinghouse Inerteen PCB Transformer holding 128 gallons that serviced Cottage E at the School located in the ground floor mechanical room (Room 17); (3) the COOP 300 KVA Pad Mount PCB Transformer; Serial # 12004066 installed around 1951 at Jones Vocational; (4) the 50 KVA Pad Mount PCB Transformer installed around 1974 at Akin Health and PE; and (5) the 50 KVA Pad Mount PCB Transformer installed around 1974 at Akin Health and PE. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.214(a)(1) and 40 C.F.R. § 761.180(a).
21. 40 C.F.R. § 761.218(d)(1) requires generators of PCB waste to keep a copy of each Certificate of Disposal that they receive from disposers of PCB waste among the records they retain under 40 C.F.R. § 761.180(a). The Respondent has not provided Certificates of Disposal for the Westinghouse Inerteen PCB Transformer holding 128 gallons that serviced Cottage E at the School located in the ground floor mechanical room (Room 17); the COOP 300 KVA Pad Mount PCB Transformer; Serial # 12004066 installed around

1951 at Jones Vocational; the 50 KVA Pad Mount PCB Transformer installed around 1974 at Akin Health and PE; and the 50 KVA Pad Mount PCB Transformer installed around 1974 at Akin Health and PE. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.218(d)(1).

22. 40 C.F.R. § 761.205(a)(2) requires all generators of PCB waste who first engage in PCB waste handling activities after February 5, 1990, to notify EPA of their PCB waste activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities. The Respondent did not notify the EPA of its PCB waste handling activities at the School. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.205(a)(2).

23. 40 C.F.R. § 761.30(a)(1)(v)(A) requires no later than December 28, 1998, all owners of PCB Transformers, including those in storage for reuse, to register their transformers with the EPA's National Program Chemicals Division, Office of Pollution Prevention and Toxics. The Respondent did not register its PCB transformers with the EPA. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.30(a)(1)(v)(A).

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.

25. 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.

26. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

27. 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.

28. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
29. 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

30. Respondent is assessed a civil penalty of **FORTY-FIVE THOUSAND NINE HUNDRED AND FIFTY-EIGHT DOLLARS (\$45,958.00)**, which shall be paid within forty-five (45) days from the effective date of this CAFO.
31. Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check or regular check from the Respondent made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

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

U. S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1819

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

32. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) 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;

and

Kris Lippert
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

33. 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.
34. Pursuant to 31 U.S.C. § 3717, the 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.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. Each undersigned representative of the parties 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

38. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

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AGREED AND CONSENTED TO:

Respondent: The State of Tennessee Department of Education
Docket No.: TSCA-04-2018-2903(b)

By: Penny Schwin (Signature)

Date: 2/14/2019

Name: Penny Schwin (Typed or Printed)

Title: Commissioner (TN) (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Susan E. Hansen for Carol J. Monell Date: 3/5/19
~~Susan E. Hansen~~
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 13th day of March, 2018.⁹

By: Tanya Floyd
Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO), for State of Tennessee Department of Education, Docket Number: TSCA-04-2018-2903(b), on 3-14-19, and on 3-14-19, served the parties listed below in the manner indicated:

Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA Internal Mail)

Kris Lippert
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA Internal mail)

Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA Internal mail)

Mr. Gregory T. Young
Partner
Burr & Forman
222 Second Avenue South
Suite 2000
Nashville, Tennessee 37201

(Via Certified Mail – Return Receipt Requested)

Date: 3-14-19



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511