



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**SEP 21 2012**

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Dana L. Pittman  
Assistant Attorney General  
Alabama Board of Pardons and Paroles  
Criminal Justice Center, Building D  
301 South Ripley Street  
P.O. Box 302405  
Montgomery, Alabama 36130-2405

Re: Consent Agreement and Final Order - Docket No. TSCA-04-2012-2913(b)

Dear Ms. Pittman:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) resulting from settlement discussions to resolve alleged violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* Please note that instruction on payment of the penalty is in Section VI of this CAFO.

Thank you for your cooperation in reaching resolution of this matter.

If you have any questions, please contact Mr. William Kappler at (404) 562-8498.

Sincerely,

A handwritten signature in black ink that reads "César A. Zapata".

César A. Zapata  
Chief RCRA and OPA Enforcement and Compliance  
Branch  
RCRA Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV

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HEARING CLERK

In the Matter of: )  
)  
Alabama Board of Pardons and Paroles )  
Criminal Justice Center, Building D )  
301 South Ripley Street )  
P.O. Box 302405 )  
Montgomery, Alabama 36130-2405 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No. TSCA-04-2012-2913(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 Recovery Act Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Alabama Board of Pardons and Paroles.
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 redelegated this authority to the Director of the Resource Conservation and Recovery Act (RCRA) Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA 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 rules 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 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. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual 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  
(404) 562-8498

## **III. Specific Allegations**

6. Respondent is a user of PCB Items operating in the State of Alabama and is a “person” as defined in 40 C.F.R. § 761.3.
7. 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.
8. 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.
9. 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, capacitors and discharge resistors.
10. Pursuant to 40 C.F.R. § 761.3, PCB Transformer means any transformer that contains  $\geq 500$  ppm PCBs.
11. On August 29, 2011, an inspection was conducted by the Alabama Department of Environmental Management (ADEM) at Respondent’s facility located at 2115 Bashi Road, in Thomasville,

Alabama, to determine compliance with the regulations.

12. At the time of the inspection, information obtained by ADEM indicated that the U. S. Army built a radar tower and installed a substation in 1959. The installation included a substation consisting of 3 large ESCO transformers and 9 large capacitors. The U.S. Army apparently decommissioned the radar dish antenna and some equipment prior to turning the property over to the State of Alabama. The concrete tower, elevator and the substation were left in place.
13. At the time of the inspection, ADEM observed 3 large ESCO transformers and 9 large capacitors (PCB Items) mounted on a concrete pad and were not in service. The PCB Items were used to power motors on the top of the tower that rotated the radar antenna along with power for operation. Although the PCB concentration was not known, all the PCB Items were assumed to contain PCB oil in concentration greater than 500 ppm. ADEM did not observe any disrepair or leaks.
14. EPA issued Respondent a Notice of Violation of the Toxic Substances Control Act (TSCA) and Notice of Opportunity to Show Cause on May 11, 2012, for apparent PCB violations. The Respondent contacted EPA on May 16, 2012, to request a date to attend a show cause meeting. EPA requested that the Respondent provide written information and/or documentation of any new findings or facts not previously known to EPA prior to the meeting date.
15. On May 23, 2012, the Respondent contracted with Florida Transformer, Inc. (FTI) for the removal, laboratory testing, and disposal of the PCB Items. On June 1, 2012, the PCB Items were removed from Respondent's facility. The PCB Items were sampled and tested by FTI on or about June 7, 2012. The PCB Items were transported to FTI, located in Defuniak Springs, Florida for processing and storage with final disposal to Chemical Waste Management of Emelle, Alabama. The Respondent submitted a hazardous waste manifest (number 007352258 JJK) showing shipment of the PCB Items. Based on the analytical laboratory test results submitted by the Respondent, the total PCB concentration for the 3 large transformers, were non-detect, 3 ppm, and 2 ppm. The total PCB concentration for the 9 large capacitors, ranged from a high concentration of 2,117,519 ppm to a low concentration of 736,552 ppm.
16. Pursuant to 40 C.F.R. § 761.40(a)(3), PCB Items must be marked with the PCB M<sub>L</sub> label at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked. Nine large capacitors did not have a PCB M<sub>L</sub> label. Therefore, EPA alleges Respondent violated 40 C.F.R. § 761.40(a)(3).
17. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items must be dated on the item when they are removed from service for disposal. Nine large capacitors were not marked with a date. Therefore, EPA alleges Respondent violated 40 C.F.R. § 761.65(c)(8).
18. Pursuant to 40 C.F.R. § 761.65(b), PCBs and PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. The storage for disposal requirement for the 9 large capacitors was not adequate. Therefore, EPA alleges Respondent violated 40 C.F.R. § 761.65(b).

#### **IV. Consent Agreement**

19. 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.
20. 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.
21. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
22. 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 and the PCB regulations.
23. 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.
24. 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**

25. 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 **TWO THOUSAND Dollars (\$2,000)**.
26. 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**

27. Respondent is assessed a civil penalty of **TWO THOUSAND Dollars (\$2,000)** which shall be paid within 30 days from the effective date of this CAFO.
28. 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  
Alabama Board of Pardons and Paroles and Docket Number TSCA-04-2012-2913(b).**

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

29. 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  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

and

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

30. 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.

31. 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.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. 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.

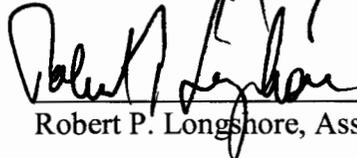
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35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

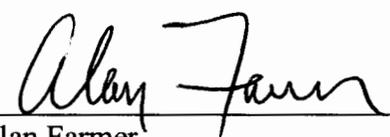
**Respondent:** Alabama Board of Pardons and Paroles  
**Docket No.:** TSCA-04-2012-2913(b)

By:  (Signature) Date: 9/11/12  
William Wynne, Jr., Chairman

By:  (Signature) Date: 9/11/12  
Robert P. Longshore, Associate Member

By:  (Signature) Date: 9/11/12  
Cliff Walker, Associate Member

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 9/18/12  
G. Alan Farmer  
Director  
RCRA Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 21 day of Sept., 2012.

By:   
Susan B. Schub  
Regional Judicial Officer

Docket No. TSCA-04-2012-2913(b)

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Alabama Board of Pardons and Paroles, Docket No. TSCA-04-2012-2913(b) (filed with the Regional Hearing Clerk) on September 21, 2012 ) was served on September 21, 2012 in the manner specified to each of the persons set forth below:

Dana L. Pittman  
Assistant Attorney General  
Alabama Board of Pardons and Paroles  
Criminal Justice Center, Building D  
301 South Ripley Street  
Montgomery, Alabama 36130-2405

Certified Mail  
Return Receipt Requested

Lynda C. Crum  
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 Branch  
U.S. EPA - Region 4, 10<sup>th</sup> Floor  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Via EPA's Internal Mail

Tammye Cross  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA - Region 4, 10<sup>th</sup> Floor  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Via EPA's Internal Mail

Quantindra Smith  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA - Region 4, 10<sup>th</sup> Floor  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Via EPA's Internal Mail

Date 9-21-12



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9511

STATE BOARD OF PARDONS AND PAROLES

BOARD ORDER

The Board of Pardons and Paroles met on this 11<sup>th</sup> day of September, 2012, in open public meeting, at which time the following Board Members were present: Bill Wynne, Chairman, Robert P. Longshore, Member, and Cliff Walker, Member.

The Board hereby consents to the payment of *Two Thousand Dollars (\$2000)* as final settlement for *alleged* violations of the Toxic Substances Control Act (TSCA), where the Environmental Protect Agency (EPA) issued a Notice of Violation against the Board on May 11, 2012.

Let it be known that the attached "Consent Agreement and Final Order" provides that the Board neither admits nor denies the factual allegations set forth in the Agreement. See Section IV, "Consent Agreement", Section 19.

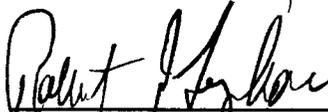
Done this 11<sup>th</sup> day of September, 2012.

APPROVED

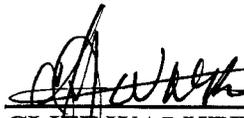
DISAPPROVED

  
\_\_\_\_\_  
BILL WYNNE  
CHAIRMAN

\_\_\_\_\_  
BILL WYNNE  
CHAIRMAN

  
\_\_\_\_\_  
ROBERT P. LONGSHORE  
MEMBER

\_\_\_\_\_  
ROBERT P. LONGSHORE  
MEMBER

  
\_\_\_\_\_  
CLIFF WALKER  
MEMBER

\_\_\_\_\_  
CLIFF WALKER  
MEMBER