



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 01 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Burchett
Safety and Risk Management Superintendent
Riviera Utilities
413 East Laurel Avenue
Foley, Alabama 35535

SUBJ: Executed Consent Agreement and Final Order
Docket No.: TSCA-04-2010-2903(b)

Dear Mr. Burchett:

Enclosed please find the executed Consent Agreement and Final Order (CAFO) for the Riviera Utilities Toxic Substances Control Act (TSCA) case. The effective date for the CAFO is stated in Section VI of the CAFO.

Thank you for your cooperation in this matter. If you have any questions or concerns regarding this document, please contact Kris Lippert, of my staff at (404) 562-8605 or by email at lippert.kristin@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Alan Farmer".

G. Alan Farmer, Director
RCRA Division

Enclosure

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2010 SEP -1 PM 4: 10
COMMUNICATIONS SECTION

In the Matter of:)
)
Riviera Utilities)
413 East Laurel Avenue)
Foley, Alabama 36535)
)
Respondent)
)
)
)
_____)

Docket No. TSCA-04-2010-2903(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 RCRA Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Riviera Utilities.
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. 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 regulations 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 \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. 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.
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:

Nancy McKee, Acting Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8674

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. On or about February 22, 2010, the Alabama Department of Environmental Management (ADEM) conducted an inspection at Respondent's facility located at 413 East Laurel Avenue, Foley, Alabama 36535 to determine compliance with the PCB regulations.
8. During the inspection, ADEM reviewed records showing that a Westinghouse transformer, 15 KVA, serial number 58M9079, had been sampled on July 3, 2001, and that the fluid was determined to contain 259 ppm PCBs. ADEM also determined based on a review of records at the facility that Florida Transformer had removed the transformer from Riviera Utilities on a non-hazardous waste manifest (Manifest #07127) on July 12, 2007.
9. During the inspection, Respondent was unable to present to ADEM a Certificate of Disposal for the Westinghouse transformer referenced in paragraph 8 herein.
10. Pursuant to 40 C.F.R. § 761.207(a), a generator who relinquishes control over PCB wastes by transporting, or offering for transport by his own vehicle or by a vehicle owned by another person, PCB waste for commercial off-site storage or off-site disposal shall prepare a manifest on EPA form 8700-22, and if necessary, a continuation sheet. By failing to correctly manifest the disposal of the Westinghouse transformer referenced in paragraph 8 herein, on EPA form 8700-22, Respondent violated 40 C.F.R. § 761.207(a).
11. Pursuant to 40 C.F.R. § 761.218(d)(1), generators of PCB waste shall 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). At the time of the inspection, Respondent was unable to produce a copy of the Certificate of Disposal for the Westinghouse transformer referenced in paragraph 8 herein. A copy of the Certificate of Disposal was later received by ADEM on February 26, 2010. By failing to maintain the Certificate of Disposal on-

site, Respondent violated 40 C.F.R. § 761.218(d)(1).

IV. Consent Agreement

12. 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.
13. 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.
14. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
15. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
16. 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.
17. 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

18. Respondent is assessed a civil penalty of FIFTEEN HUNDRED AND THIRTY-FIVE DOLLARS (\$1,535), which shall be paid within 30 days from the effective date of this CAFO.
19. 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 the
Respondent and Docket Number of this CAFO.**

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

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact: Natalie Pearson (314) 418-4087

20. 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

and

Nancy McKee, Acting Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

21. 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.
22. 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:
23. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
24. This CAFO shall be binding upon the Respondent, its successors and assigns.
25. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to this CAFO.

VI. Effective Date

26. 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: Riviera Utilites
Docket No.: TSCA-04-2010-2903(b)

By: *B. H. G. Burchett* (Signature) Date: *August 24, 2010*
Name: *B. H. G. Burchett* (Typed or Printed)
Title: *Supt. Safety + Risk* (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: *Alan Farmer* Date: *8/31/10*
G. Alan Farmer, Director
RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this *1st* day of *Sept*, 2010.

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

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Riviera Utilities, Docket Number: TSCA-04-2010-2903(b), to the addresses listed below.

Mr. Bill Burchett
Riviera Utilities
413 East Laurel Avenue
Foley, Alabama 36535

(via Certified Mail, Return Receipt Requested)

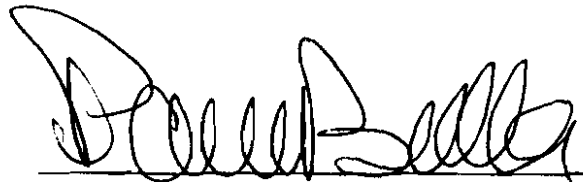
Robert Caplan
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Quantindra Smith
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Date: 9-1-10



Patricia L. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511