



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

FEB 27 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Leonard
General Counsel
The Broe Companies
252 Clayton Street
Denver, Colorado 80206

Re: Century Coal, LLC
Consent Agreement and Final Order (CAFO)
Docket No. TSCA-04-2013-2902(b)

Dear Mr. Leonard:

Enclosed please find a copy of the executed 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.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Century Coal in Beverly, Kentucky on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the U.S. Environmental Protection Agency.

If you have any questions or concerns, please contact Kris Lippert, of my staff at (404) 562-8605.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

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

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 FEB 21 PM 2:28
HEARING CLERK

In the Matter of:)
)
Century Coal, LLC)
19485 South Highway 66)
Beverly, Kentucky 40913)
)
Respondent)
_____)

Docket No. TSCA-04-2013-2902(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 (RCRA) Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Century Coal, LLC.
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 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 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 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.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Kris Lippert
RCRA/OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8605

III. Specific Allegations

6. Respondent was a user of PCB Items operating in the Commonwealth of Kentucky and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about October 9, 2007, an inspection was conducted at Respondent’s facility located at 19485 South Highway 66, Beverly, Kentucky, to determine compliance with the PCB regulations.
8. During the inspection, Respondent was storing for disposal four (4) General Electric platform mount

type transformers containing approximately 321 gallons of PCB fluids each, totaling 1284 gallons.

Two (2) of the transformers had PCB concentrations between 50 and 499 ppm; these two transformers were PCB-contaminated transformers. The other two (2) transformers had PCB concentrations greater than 500 ppm, and were considered to be PCB transformers.

9. 40 C.F.R. § 761.65(a)(1) requires that any PCB waste must be disposed of as required by Subpart D of the PCB regulations within 1-year from the date it was determined to be PCB waste and the decision was made to dispose it. During the inspection, Respondent was unable to provide records of any monthly inspections conducted by Respondent or annual document logs indicating how long the four General Electric PCB-contaminated and PCB transformers had been stored for disposal on-site, nor was Respondent able to demonstrate that the transformers had been present less than one year. Therefore, Respondent violated 40 C.F.R. § 761.65(a)(1).
10. 40 C.F.R. § 761.65(c)(8) requires that PCB Items, including PCB-contaminated and PCB transformers, must be marked with the date when they were removed from service for disposal. At the time of the inspection, the four (4) General Electric platform-mount type PCB-contaminated and PCB transformers being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(8).
11. 40 C.F.R. § 761.40(a)(10) requires that each storage area used to store PCBs and PCB Items for disposal be marked with an M_L as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the time of the inspection, the area where the four (4) General Electric platform-mount type PCB-contaminated and PCB transformers were being stored on-site awaiting disposal was not marked with an appropriate PCB label. Therefore, Respondent violated 40 C.F.R. § 761.40(a)(10) as incorporated by 40 C.F.R. § 761.40(c)(3).
12. 40 C.F.R. § 761.65(c)(5) requires that PCBs and PCB Items including PCB transformers and PCB-contaminated transformers held in storage for disposal shall be checked for leaks at least once every 30 days. 40 C.F.R. § 761.180(a)(1)(iii) requires records of inspections and cleanups performed in accordance with 40 C.F.R. § 761.65(c)(5). At the time of the inspection, Respondent had no records

documenting that the four (4) General Electric platform-mount type PCB-contaminated and PCB transformers had been checked for leaks at least once every 30 days. Therefore, Respondent violated 40 C.F.R. §§ 761.65(c)(5) and 761.180(a)(1)(iii).

13. 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) or PCBs contained in PCB containers, 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 inspection, annual document logs showing the disposition of PCBs and PCB Items were not being maintained at the facility. Therefore, Respondent violated 40 C.F.R. § 761.180(a).

14. 40 C.F.R. § 761.65(b) requires that PCB and PCB Items designated for disposal must be stored in an area which has an adequate roof and walls to prevent rain water from reaching stored PCBs and PCB Items, and a non-porous floor with continuous curbing with a minimum 6 inch high curb. At the time of the inspection, Respondent was storing the four (4) General Electric platform-mount type PCB-contaminated and PCB transformers outside on pallets on unpaved ground. Therefore, Respondent violated 40 C.F.R. § 761.65(b).

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.

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. For the purposes of achieving a resolution by settlement, 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 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. 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

21. Respondent is assessed a civil penalty of FIFTEEN THOUSAND DOLLARS (\$15,000.00), which shall be paid within 30 days from the effective date of this CAFO.
22. 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 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, 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 delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2GL
St. Louis, Missouri 63101
(314) 418-1028

Wire Transfer Instructions

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, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

23. 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;

Kris Lippert
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

and

Saundi Wilson
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

24. 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.

25. 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.

- 26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 27. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 28. Each undersigned representative of the parties y 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

29. 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: Century Coal, LLC
Docket No.: TSCA-04-2013-2902(b)

By: _____ (Signature) Date: 1.23.13

Name: Thomas G. Mansola (Typed or Printed)

Title: Manager (Typed or Printed)

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

By: Alan Farmer Date: 2/12/13

G. Alan Farmer, Director
RCRA Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 21st day of February, 2013.

By: _____

h Susan B. Schub
Regional Judicial Officer

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 Century Coal, LLC, Docket Number: TSCA-04-2013-2902(b), on FEB 27 2013, and on FEB 27 2013, served the parties listed below in the manner indicated:

Robert Caplan (Via EPA Internal Mail)
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909


Kris Lippert (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

Bill Leonard, General Counsel (Via Certified Mail – Return Receipt Requested)
The Broe Companies
252 Clayton Street
Denver, Colorado 80206

Date:

2-27-13



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