



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

July 15, 2014

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL 7009 1680 0000 7649 6766
RETURN RECEIPT REQUESTED

Mr. Milton Latvala
City of Nashwauk
301 Central Avenue
Nashwauk, Minnesota 55769

Consent Agreement and Final Order in the Matter of
City of Nashwauk, Docket No. TSCA-05-2014-0016

Dear Mr. Latvala:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 15, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,432 is to be paid in the manner described in paragraphs 25 and 26. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by August 4, 2014 (within 120 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Tony Martiny

for Kenneth Zolnierczyk
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
City of Nashwauk)
Nashwauk, Minnesota)
)
Respondent.)
_____)

Docket No. TSCA-05-2014-0016



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is the City of Nashwauk, a municipality operating under the laws of the State of Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCB) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 Federal Register 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (the PCB Rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially re-codified at 40 C.F.R. Part 761.

10. The PCB Rule at 40 C.F.R. § 761.1(b)(1) states, in part, that the regulations at 40 C.F.R. Part 761 apply to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.

11. The PCB rule at 40 C.F.R. § 761.2(a) states that oil filled electrical equipment manufactured before July 2, 1979, where PCB concentration is not established, is assumed to contain PCBs at a concentration greater than or equal to 50 ppm, but less than 500 ppm.

General Allegations

12. Respondent is a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. Part 761.

13. Respondent is the owner and operator of the facility at 301 Central Avenue, Nashwauk, Minnesota.

14. On July 28, 2009, an EPA representative inspected Respondent's Facility.

Specific Allegations

15. Pursuant to the inspection, EPA determined that a transformer containing PCBs above 50 ppm was stored for disposal at Respondent's Facility in an area without adequate roof, walls, and continuous floor and curbing.

16. Respondent's failure to properly store the transformer identified above, in an area without adequate roof, walls, and continuous floor and curbing, constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

17. Pursuant to the inspection, EPA determined that a storage area used by Respondent to store a transformer containing PCBs above 50 ppm was not marked with an M_L label.

18. Respondent's failure to properly mark a PCB storage area constitutes a violation of the regulation at 40 C.F.R. § 761.40(a), and Section 15 of TSCA, 15 U.S.C. § 2614.

19. Pursuant to the inspection, EPA determined that storage for reuse records were maintained by Respondent for a transformer containing PCBs above 50 ppm.

20. Respondent's failure to maintain storage for reuse records for the transformer identified above, constitutes a violation of the regulation at 40 C.F.R. § 761.35(a)(2), and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

21. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to assess a civil penalty under section 16 of TSCA of up to \$25,000 for each unlawful act committed under section 15 of TSCA, 15 U.S.C. § 2614. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *note*, U.S. EPA increased the maximum penalty to \$32,500 for each violation occurring after March 15, 2005 (see 40 C.F.R. § 19.4). In determining the amount of

any civil penalty, section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

22. EPA calculates penalties by applying its “Polychlorinated Biphenyls (PCBs) Penalty Policy,” dated April 9, 1990” (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases.

23. By letter dated July 20, 2012, U.S. EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of the PCB Rule and that section 16 of TSCA authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

24. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant has determined that an appropriate civil penalty to settle this action is \$8,432. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and Respondent’s ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent’s cleanup efforts in response to the alleged violations. In determining the appropriate civil penalty amount Complainant also considered “The Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13,” effective June 1, 1999.

25. Respondent agrees to pay a \$8,432 civil penalty for the TSCA violations alleged herein, within 30 days after the effective date of this CAFO, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), Respondent must send the check to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO and the billing document number.

26. Respondent must also send a notice of payment that states Respondent's name, complete address, the amount paid, the case docket number and the billing document number, to EPA at the following addresses when it pays the penalty (a copy of the check bearing this information would suffice):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

Ken Zolnierczyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604

27. This civil penalty is not deductible for federal tax purposes.

28. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action, under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

29. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

30. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

31. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

32. This CAFO does not affect Respondent's responsibility to comply with the PCB

Rule and other applicable federal, state and local laws. _____

33. Respondent certifies that it is complying with the PCB Rule.

34. The terms of this CAFO bind Respondent, and its successors and assigns.

35. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

36. Each party agrees to bear its own costs and attorneys fees in this action.

37. This CAFO constitutes the entire agreement between the parties.

For City of Nashwauk, Respondent

6/7/14
Date

E. Milton Latvala
Milton Latvala
Chairman, Public Utilities
City of Nashwauk

For the United States Environmental Protection Agency, Complainant

7/7/2014
Date


Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

In the Matter of: City of Nashwauk, Minnesota
Docket No. TSCA-05-2014-0016

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-11-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving City of Nashwauk, was filed on July 15, 2014, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7649 6766 to:

Mr. Milton Latvala
City of Nashwauk
301 Central Avenue
Nashwauk, Minnesota 55769

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Andre. Daugavietis, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2014-0016