



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 13 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Barbara H. Gallo
Krevolin Horst, LLC
One Atlantic Center
1201 West Peachtree Street, NW
Suite 3250
Atlanta, Georgia 30309

RE: Fenner Dunlop Americas, Inc.
Consent Agreement and Final Order - Docket No. TSCA-04-2012-2901(b)

Dear Ms. Gallo:

Enclosed please find a copy of the Consent Agreement and Final Order (CAFO) in the above-referenced matter. 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 Fenner Dunlop Americas, Inc. 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, please feel free to contact Brooke York, of my staff, at (404) 562-8025. Legal questions should be directed to Michiko Kono at (404) 562-9558.

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

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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HEARING CLERK

In the Matter of:)
)
Fenner Dunlop Americas, Inc.) Docket No. TSCA-04-2012-2901(b)
21 Laredo Drive)
Avondale Estates, Georgia 30002)
)
)
Respondent)
_____)

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. Respondent is Fenner Dunlop Americas, Inc.
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 the 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 the 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(e), the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such regulation 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 between March 15, 2004, and January 12, 2009, 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 the EPA in this proceeding:

Brooke York
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-8025

III. Allegations

6. Respondent was the owner of PCB Items as defined by 40 C.F.R. § 761.3 operating in the State of Georgia and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about February 18, 2011, an inspection was conducted by representatives of the EPA at the Respondent’s facility located at 21 Laredo Drive, in Avondale Estates, Georgia, to determine compliance with the PCB regulations. At the time of the inspection, the facility was undergoing demolition by Respondent’s contractor and electrical power to the building had been shut off. Respondent has asserted that it made every reasonable effort to ensure that all PCB-containing waste would be properly handled during the demolition of its facility.
8. The EPA’s PCB Spill Cleanup Policy, found in 40 C.F.R. Part 761, Subpart G requires response to all leaks and spills of PCBs to be taken as quickly as possible and within no more than 24 hours. Additionally, pursuant to 40 C.F.R. § 761.50(a)(4), spills and discharges of PCBs at concentrations greater than or equal to 50 parts per million (ppm), constitute the disposal of PCBs and are, therefore, subject to the disposal requirements set forth in 40 C.F.R. § 761.60.
9. During the February 18, 2011 inspection, the inspectors observed capacitors in the knitting room that were leaking and dripping fluids onto the floor. Based on the age of the facility and the condition of the capacitors, and in accordance with the PCB concentration “assumptions for use” found at 40 C.F.R. § 761.2(a)(4), the capacitors must be assumed to have contained PCB concentrations greater than or equal to 500 ppm. The inspectors also observed leaking

Pyranol (PCB) capacitors in the basement. Pooling of PCB oil was observed surrounding these Pyranol capacitors. Due to the presence of equipment that was leaking PCBs and no evidence that action had been taken to clean it up and properly dispose of the PCB waste and equipment, the EPA alleges that the Respondent violated 40 C.F.R. §§ 761.125 and 761.60.

10. Pursuant to the requirements set forth in 40 C.F.R. § 761.40, PCB items must be marked with the “M_L” mark as illustrated in 40 C.F.R. § 761.45(a). During the February 18, 2011, inspection, these marks were not observed on any of the various PCB electrical equipment observed at the facility, including capacitors, transformers and ballasts. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.40.
11. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(b), all PCB items designated for disposal must be stored in an area with an adequate roof, walls, and a non-porous floor with curbing. During the February 18, 2011, inspection, PCB items were not stored in an area with a non-porous floor with curbing, specifically the PCB items were stored on a wooden floor. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(b).
12. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(5), PCB items being stored for disposal shall be checked for leaks at least once every 30 days. Records of inspection, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. §§ 761.180(a) and (b). During the February 18, 2011, inspection, the inspectors observed that all the electrical equipment including PCB items and/or PCB equipment at the facility had been disconnected from the main power source and were being stored for disposal. Additionally, when asked, Respondent was not able to produce inspection records and Respondent had been unaware that the PCB regulations applied to the PCB items and/or PCB

equipment at the facility. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. §§ 761.65(c)(5) and 761.180(a) and (b).

13. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(8), PCB items must be marked with the date on which they are removed from service. During the February 18, 2011, inspection, the inspectors determined that the PCB electrical equipment at the facility had not been marked with out of service dates. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(8).

IV. Consent Agreement

14. 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.
15. 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.
16. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of the nature of the alleged violations, the EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIXTY-TWO THOUSAND DOLLARS (\$62,000).
17. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in Section V of this CAFO.
18. Respondent certifies that, as of the date of its execution of this CAFO and to the best of its knowledge, it is in compliance with all relevant requirements of TSCA and the PCB regulations found in 40 C.F.R. Part 761.
19. This CAFO constitutes a settlement by the 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, the 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 the 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 SIXTY-TWO THOUSAND DOLLARS (\$62,000), which shall be paid within 30 days from the effective date of this CAFO.
22. 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
P.O. 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.**

Alternatively, for payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), Respondent shall send the check to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

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

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, SW
Atlanta, Georgia 30303-8960

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

and

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

23. 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.
24. 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

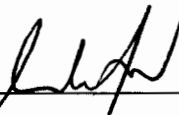
within 90 days of the due date.

VI. Effective Date

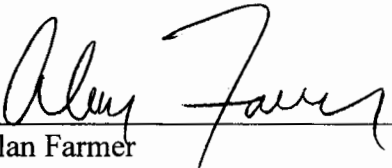
25. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

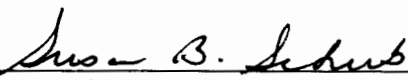
Respondent: Fenner Dunlop Americas, Inc.
Docket No.: TSCA-04-2012-2901(b)

By:  (Signature) Date: 8/31/2012
Name: Cassundra Pan (Typed or Printed)
Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

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

APPROVED AND SO ORDERED this 13 day of September, 2012.

By: 
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 Fenner Dunlop Americas, Inc. Docket Number: TSCA-04-2012-2901(b), to the addressees listed below.

via Certified Mail, Return Receipt Requested

Ms. Barbara H. Gallo
Krevolin Horst, LLC
One Atlantic Center
1201 West Peachtree Street, NW
Suite 3250
Atlanta, Georgia 30309

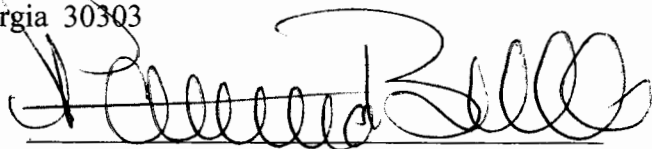
via EPA's internal mail

Robert Caplan
Senior Attorney
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

via EPA's internal mail

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

Date: 9-13-12



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303