



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

MAR 14 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory T. Young
Partner, Burr & Forman
222 Second Avenue South
Suite 2000
Nashville, Tennessee 37201

SUBJ: Tennessee Department of General Services,
Real Estate Asset Management Division (DGS/STREAM)
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2907(b)

Dear Mr. Young:

Enclosed please find a copy of the executed Consent Agreement and Final Order (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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above, and in the CAFO, should be noted on any cashier's or certified check submitted for payment of the penalty.

Should you or your client have any questions about this matter, or your client's compliance status in the future, please contact Robert Caplan at (404) 562-9520, or Kris Lippert at (404) 562-8605.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

2019 MAR 14 AM 8:57
15 MAR 2019
15 MAR 2019

In the Matter of:)
)
The State of Tennessee Department of General)
Services, Real Estate Asset)
Management Division (STREAM))
Tennessee Tower, 24th Floor)
312 Rosa L. Parks Avenue)
Nashville, Tennessee 37243)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2018-2907(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 Restoration Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is the State of Tennessee Department of General Services, Real Estate Asset Management Division (STREAM).
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 Restoration Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Resource Conservation and Restoration 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 civil penalty in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. EPA's Specific Allegations

5. Respondent is a "person" as defined in 40 C.F.R. § 761.3. Respondent manages and runs capital projects for the state of Tennessee Department of Education (TN DOE), among its other responsibilities.

6. Pursuant to its authority, Respondent was responsible for the contracting, management, and oversight of demolition, renovation and construction activities performed by contractors and subcontractors for the State of Tennessee at the Tennessee School for the Deaf (the School) that occurred between approximately 2014 and 2017. Respondent entered into contracts with general contractors including Rentenbach Constructors and Merit Construction at different times during the duration of the project to conduct specific activities at the School. Rentenbach in turn subcontracted certain demolition work to E. Luke Greene (ELG) and Merit subcontracted certain electrical work to Bass Services.
7. During ELG's demolition of Poore Hall at the School, a Westinghouse Inerteen PCB Transformer (Serial Number 654384Z) located in the basement of Poore Hall and containing 116 gallons of PCB oil was taken out of service, and ELG removed the transformer from the property. ELG transported the transformer to its facility located at 10909 McBride Lane, Knoxville, Tennessee, where it was stored on a gravel parking lot that did not meet the storage requirements for out-of-service PCB items destined for disposal.
8. In or around early May 2016, ELG arranged for a sample of the transformer oil to be analyzed for PCBs and the results showed that the oil contained 1,390,000 ppm PCBs, thereby confirming that it was a PCB Transformer. ELG thereafter notified the Respondent of the sampling results. On May 10, 2016, the Respondent requested its environmental consultant, Ensafé, to investigate the transformer at ELG's property. On or after May 10, 2016, Ensafé contacted ELG and was advised by ELG that the transformer appeared to have leaked. Ensafé visited ELG's property the day after being advised about the possible leak and confirmed that the PCB transformer was leaking.

Ensafe notified the Respondent about the leaking transformer and Respondent in turn notified the National Response Center (NRC) about the spill of PCBs.

9. The Respondent's notification to the NRC was seen by the Tennessee Department of Environment and Conservation (TDEC), and in response, on or about May 26, 2016, TDEC conducted an inspection at ELG's facility to further investigate the spill and to determine compliance with the PCB regulations.
10. Environmental sampling conducted by the Respondent's consultant revealed that the surrounding gravel and soil were contaminated with PCBs. In response to the leaking transformer and soil contamination, the Respondent hired an environmental contractor to properly remove and dispose of the transformer and to clean up the PCB contamination at ELG's property in accordance with applicable TSCA regulations.
11. At some time during the demolition, renovation and construction activities at the School, after May 27, 2014, an Askarel Standard PCB Transformer (Serial Number MET-2256) located next to the Atkin Health and PE Building, containing 240 gallons of PCB oil was removed from service for disposal. Bass Services removed the PCB Transformer from the School and transported it to Bass Services' facility formerly located at 531 N Sixth Avenue, Knoxville, Tennessee, where it was stored on a gravel parking lot that was not secure from access to trespassers, and that did not meet the storage requirements for out of service PCB items destined for disposal.
12. On February 17, 2017, TDEC inspected the former Bass Services facility at 531 N Sixth Avenue, Knoxville, Tennessee, in response to having been alerted to the presence of a PCB Transformer at the former Bass Services facility. During the inspection, TDEC's inspectors observed a PCB Transformer (Serial Number MET-2256) sitting in the gravel

parking lot and determined that it was the PCB Transformer removed by Bass Services from the Akin Health and P.E. Building at the School sometime after May 27, 2014, during demolition activities. Respondent hired an environmental contractor who picked up the transformer from the Bass Services facility and properly transported it to a disposal facility on or about May 15, 2017 in accordance with applicable TSCA regulations.

13. Results of sampling of the oil in the Askarel Standard PCB Transformer (Serial Number MET-2256) by TCI of Alabama, LLC, in May 2017, showed that the oil contained 600,000 ppm PCBs. Therefore, the transformer was confirmed to be a PCB Transformer.
14. 40 C.F.R. § 761.3 defines a PCB Transformer as any transformer that contains ≥ 500 parts per million (ppm) PCBs. Mg/kg is an expression of ppm.
15. 40 C.F.R. § 761.3 defines PCB Items as 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.
16. 40 C.F.R. §761.3 defines "PCB Waste" as those PCBs and PCB Items that are subject to the disposal requirements found in 40 C.F.R. Part 761, Subpart D.
17. Pursuant to 40 C.F.R. § 761.3, "Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of Part 761, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of Subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of Subpart D of this part.

18. Pursuant to 40 C.F.R. § 761.3, “Transporter of PCB waste” means for purposes of 40 C.F.R. Part 761, Subpart K, any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for purposes other than consolidation by a generator.
19. 40 C.F.R. § 761.202(b)(2)(i) prohibits a transporter from transporting PCB waste without first having received an EPA identification number from EPA.
20. Pursuant to 40 C.F.R. § 761.202(b)(1)(ii), after June 4, 1990, a generator of PCB waste is prohibited from offering PCB waste to any transporter, disposer, or commercial storer of PCB waste who have not received an EPA identification number.
21. Respondent managed, controlled and oversaw the demolition, renovation and construction activities at the School, described in the preceding paragraphs of this CAFO, and also had authority over the actions of its contractors and subcontractors at the School. The EPA asserts that Respondent, acting in such capacity, was a generator of PCB waste, as those terms are defined in 40 C.F.R. § 761.3, whose actions first caused PCBs or PCB Items to become subject to the disposal requirements of the PCB regulations, and/or who had physical control over the PCBs when decisions were made that the use of the PCB Transformers had been terminated, and were subject to the disposal requirements of the PCB regulations.
22. EPA alleges that the Respondent, as a generator of PCB waste who managed the demolition, renovation and construction projects at the School, was required to ensure that its contractors, Merit and Rentenbach, did not allow their respective subcontractors, Bass Services and ELG, to remove and transport PCB Transformers at a time when neither Bass Services or ELG had EPA identification numbers as required by 40 C.F.R. .

§ 761.202(b)(1)(ii). The EPA further alleges that by failing to prevent its contractors from allowing the subcontractors to remove the PCB Transformers, the Respondent violated 40 C.F.R. § 761.202(b)(1)(ii).

IV. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
24. 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.
25. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
26. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
27. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
28. 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

29. Respondent is assessed a civil penalty of **THIRTEEN THOUSAND EIGHT HUNDRED AND NINETEEN DOLLARS (\$13,819.00)**, which shall be paid within forty-five (45) days from the effective date of this CAFO.
30. 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 or regular check from the Respondent 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, MO 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. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1819

For 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, NY 10045
Beneficiary = U.S. Environmental Protection Agency

31. 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;

and

Kris Lippert
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

32. 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.
33. 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.

34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. 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.

VI. Effective Date


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

Page Intentionally Left Blank

AGREED AND CONSENTED TO:

Respondent: The State of Tennessee Department of General Services, Real Estate Asset Management Division

Docket No.: TSCA-04-2018-2907(b)

By:  (Signature) Date: 12/11/2018

Name: John M. Hull (Typed or Printed)

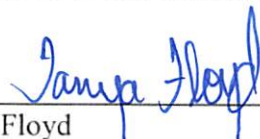
Title: Deputy Commissioner (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 3/5/19

Susan E. Hansen
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 13th day of March, 2018.

By: 
Tanya Floyd
Regional Judicial Officer
EPA Region 4

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 State of Tennessee Department of General Services, Real Estate Asset Management Division (DGS/STREAM) Docket Number: TSCA-04-2018-2907(b), on 3-14-19, and on 3-14-19, served the parties listed below in the manner indicated:

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

Kris Lippert (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Quantindra Smith (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. Gregory T. Young (Via Certified Mail – Return Receipt Requested)
Partner
Burr & Forman
222 Second Avenue South
Suite 2000
Nashville, Tennessee 37201

Date: 3-14-19



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