



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 21 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Tommy Ryals  
Alabama Power  
600 North 18<sup>th</sup> Street  
P.O. Box 2641  
Birmingham, Alabama 35291-0830

RE: Alabama Power  
Consent Agreement and Final Order  
Docket No. TSCA-04-2016-2902(b)

Dear Mr. Ryals:

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.

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 Alabama Power, on notice of their potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States 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 blue ink, appearing to read "William E. Truman".

William E. Truman  
Acting Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Alabama Power )  
744 County Road 87 )  
Calera, Alabama 35040 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2016-2902(b)

HEARING CLERK  
2016 APR 21 AM 10:39  
USEPA REGION 4  
OFFICE OF REGIONAL  
COUNCIL

**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 (RCRD), United States Environmental Protection Agency, Region 4 (EPA). Respondent is Alabama Power.
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 RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD 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  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-8605

## **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 March 9, 2015, an Alabama Department of Environmental Management (ADEM) representative, on behalf of the EPA, conducted an inspection at Alabama Power’s facility located at 744 County Road 87, Calera, Alabama 35040 (the facility), to determine compliance with the PCB regulations.
8. During the inspection, the following PCB-Contaminated Items were being stored for disposal in Building 1A:

Universal Tracking Record (UTR)	Removed from Service Date	Description	Weight (pounds)
80770	12/5/2014	Soil in supersack	1020
80769	12/5/2014	Soil in supersack	950
80768	12/5/2014	Soil in supersack	970
No UTR	10/16/2014	Soil in supersack from	1410

		Gardendale	
80772	12/5/2014	Soil in supersack	830
Not visible (could be 80773 and 80774)	Not visible (12/5/2014 if 80773 and 80774)	Soil in supersack (2)	650 730
79939	10/3/2014	PCB waste in supersack	110
80767	12/5/2014	Soil in supersack	1350
72273	12/5/2014	Soil in supersack	1410
77103	3/5/2015	Soil in metal drum	845
74951	8/1/2014	Transformer in drum	385
76042	7/21/2014	Transformer in bag	346
75445	6/4/2014	Transformer in bag	410
79940	10/31/2014	Transformer in bag	330
76045	8/14/2014	Transformer in bag	338
59709	1/16/2015	Ballasts in fiber drum	179
64810	4/24/2013	Ballasts in cardboard box	35
66484	1/8/2015	Ballasts in bucket	20
66477	9/19/2014	Ballasts in bucket	95
71651	1/20/2015	Large ballast	34
No UTR	Not easily visible	Small cardboard box and clear plastic box of ballasts	8 95

9. 40 C.F.R. § 761.3 defines PCB Item 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.
10. Pursuant to 40 C.F.R. § 761.65(a)(1), 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. This date is the date of removal from service for disposal. During the inspection, the PCB ballasts in a cardboard box labeled with UTR 64810, removed from service date 4/24/2013, had been stored for greater than 1-year. Therefore, Respondent violated 40 C.F.R. § 761.65(a)(1).
11. Pursuant to 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked in accordance with 40 C.F.R. § 761.45(a). At the time of the inspection, the PCB storage area, Building 1A, was not marked as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). Therefore, Respondent violated 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3).

#### **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.

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. 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.
15. Respondent certifies, in good faith and based on reasonable inquiries, 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 FOUR THOUSAND EIGHT HUNDRED AND NINETEEN DOLLARS (\$4,819), which shall be paid within 30 days from the effective date of this CAFO.
19. 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, Respondents 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) 425-1818

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

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

20. 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  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
U.S. EPA Region 4  
61 Forsyth Street  
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 Respondent, its successors and assigns.
25. Each undersigned representatives 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**

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

**(INTENTIONALLY LEFT BLANK)**

**AGREED AND CONSENTED TO:**

**Docket No.:** TSCA-04-2016-2902(b)

**Respondent:** Alabama Power

By: Susan Comensky (Signature) Date: 3/23/16

Name: Susan Comensky (Typed or Printed)

Title: Vice President, Environmental Affairs (Typed or Printed)

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

By: Alan Farmer Date: 3/30/16

G. Alan Farmer, Director  
Resource Conservation and Restoration Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 19<sup>th</sup> day of April, 2016.

By: Tanya Floyd  
Tanya Floyd  
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 the attached Final Order (CAFO), for Alabama Power, Docket Number: TSCA-04-2016-2902(b), on 4-21-16, and on 4-21-16, served the parties listed below in the manner indicated:

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

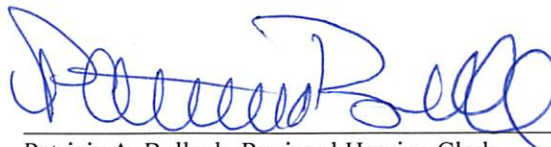
Kris Lippert (Via EPA Internal mail)  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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 30303-8960

Mr. Tommy Ryals (Via Certified Mail – Return Receipt Requested)  
Alabama Power  
600 North 18<sup>th</sup> Street  
Birmingham, Alabama 35291-0830

Date:

4-21-16



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