



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 23 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL @ JPENNINGTON@EMERALDTRANSFROMER.COM

Ms. Jessica Pennington
Director of Safety and Compliance
Transformer Decommissioning Inc.
9722 Barker Drive
Nabb, Indiana 47147

Consent Agreement and Final Order–In the Matter of:
Transformer Decommissioning Inc., Illinois Docket No. TSCA-05-2019-0004

Dear Ms. Pennington:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 23, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,793 is to be paid in the manner described in paragraphs 39-45. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Moore".

Kendall Moore
Pesticides and Toxics Compliance Section

Enclosure

cc: Josh Zaharoff, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

TRANSFORMER DECOMMISSIONING
INC.
NABB, IN
RESPONDENT.



DOCKET NO.: TSCA-05-2019-0004

PROCEEDING TO ASSESS
A CIVIL PENALTY UNDER
SECTION 16(a) OF THE TOXIC
SUBSTANCES CONTROL ACT,
15 U.S.C. § 2615(a)

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 Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency ("EPA"), Region 5.
3. The Respondent is Transformer Decommissioning, Inc., a Delaware corporation with a facility located at 9722 Barker Drive, Nabb, Indiana 47147 ("the Facility").
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"). *See* 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 terms of this CAFO, including the assessment of the civil penalty specified below.

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 any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and under 40 C.F.R. § 22.15(c); its right to appellate review under Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (“PCBs”) Disposal and Marking regulations were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations (“PCB rule”) were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the Disposal and Marking

regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

10. PCB means any chemical substance limited to the biphenyl molecule that has been chlorinated to varying degrees, or any combination of substances containing such substance. 40 C.F.R. § 761.3.

11. A transformer that contains greater than or equal to 500 parts per million (ppm) PCBs is a “PCB Transformer” as defined in 40 C.F.R. § 761.3.

12. A transformer that contains PCBs and whose surface(s) has been in direct contact with PCBs is a “PCB Article” and “PCB Item” as defined in 40 C.F.R. § 761.3.

13. The terms “leak” or “leaking” mean any instance in which a PCB Article has any PCBs on any portion of its external surface. 40 C.F.R. § 761.3.

14. Spills, leaks, and other uncontrolled discharges of PCBs are defined as “disposal” of PCBs and PCB Items. 40 C.F.R. § 761.3.

15. Under 40 C.F.R. § 761.60(a), liquids containing PCBs at concentrations greater than or equal to 50 ppm must be disposed of in an incinerator that complies with 40 C.F.R. § 761.70, unless otherwise stated or EPA approves an alternative method and waives the incinerator requirement pursuant to 40 C.F.R. § 761.60(e).

16. Under 40 C.F.R. § 761.65(c)(1), non-leaking PCB Articles may be stored temporarily for up to 30 days from the date of removal from service in an area that does not comply with 40 C.F.R. § 761.65(b), provided a notation is attached to the PCB Item indicating the date the item was removed from service. Leaking PCB Articles may also be stored temporarily in an area that does not comply with 40 C.F.R. § 761.65(b) if the PCB Articles are

placed in a non-leaking PCB Container (as defined under 40 C.F.R. § 761.3) containing sufficient sorbent materials to absorb any liquid PCBs remaining in the PCB Articles.

17. Under 40 C.F.R. § 761.35(a), a PCB Article may be stored for reuse in an area which is not designed, constructed, and operated in compliance with 40 C.F.R. § 761.65(b), for no more than 5 years after the date the PCB Article was originally removed from use if, among other conditions, certain record keeping requirements are met. The records must indicate: (i) the date the PCB Article was removed from use or August 28, 1998, if the removal date is not known; (ii) the projected location and the future use of the PCB Article; and (iii) if applicable, the date the PCB Article is scheduled for repair or servicing.

18. Under 40 C.F.R. § 761.2(a)(2), any person must assume that mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and whose PCB concentration is not established is PCB-Contaminated Electrical Equipment (i.e., contains ≥ 50 ppm PCB, but < 500 ppm PCB). All pole-top and pad-mounted distribution transformers manufactured before July 2, 1979, must be assumed to be mineral-oil filled. Any person may assume that electrical equipment manufactured after July 2, 1979, is non-PCB (i.e., < 50 ppm PCBs). If the date of manufacture of mineral oil-filled electrical equipment is unknown, any person must assume it to be PCB-Contaminated.

19. Under 40 C.F.R. § 761.2(a)(3), any person must assume that a transformer manufactured prior to July 2, 1979, that contains 1.36 kg (3 pounds) or more of fluid other than mineral oil and whose PCB concentration is not established, is a PCB Transformer (i.e., ≥ 500 ppm). If the date of manufacture and the type of dielectric fluid are unknown, any person must assume the transformer to be a PCB Transformer.

20. Under 40 C.F.R. § 761.3, a person is defined as any natural or judicial person including any individual, corporation, partnership, or association.

21. Section 15(1) of TSCA, 15 U.S.C. § 2615(1) provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605(e). *See also*, 40 C.F.R. § 761.1(d).

22. The EPA Administrator may assess a civil penalty of up to \$38,892 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614, that occurred after November 2, 2015 and assessed after January 15, 2018, pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and 40 C.F.R. Part 19.

General Factual Allegations

23. Respondent is a corporation, and thus a person under 40 C.F.R. § 761.3.

24. At all times relevant to this Order, Respondent owned and operated the Facility located at 9722 Barker Drive, Nabb, Indiana 47147. The Facility's street address was 3478 West Marble Hill Road until March 26, 2018, when the street address was changed to 9722 Barker Drive, Nabb, Indiana, 47147, but this involved no physical change to the Facility or its location.

25. On June 17, 2016, an Indiana Department of Environmental Management (IDEM) inspector performed an inspection of the Facility.

26. On June 17, 2016, the IDEM inspector noted a leaking transformer stored at the Facility with oil staining on the exterior surface and evidence of oil staining on the ground underneath the transformer.

27. On June 17, 2016, the IDEM inspector collected a sample of the internal transformer oil by drilling a hole in the top of the leaking transformer.

28. The sample result for the oil in the leaking transformer was 1500 ppm PCB.

29. The leaking transformer was a PCB Article, PCB Item, and PCB Transformer under the PCB rule.

Count I – Improper Disposal

30. The statements in paragraphs 1 through 29 are incorporated by reference as if set forth in full.

31. The sample collected on June 17, 2016, indicated the oil in the leaking transformer located at the Facility contained PCBs at a concentration of 1500 ppm.

32. The PCB oil leakage from the transformer at the Facility constitutes disposal of PCBs and Respondent was required to dispose of the PCBs in an incinerator pursuant to 40 C.F.R. § 761.60(a).

33. Respondent's failure to dispose of PCBs at an approved incinerator or to obtain EPA's approval for an alternative method constitutes improper disposal of PCBs and is a violation of 40 C.F.R. § 761.60(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count II – Improper Storage

34. The statements in paragraphs 1 through 29 are incorporated by reference as if set forth in full.

35. The transformer that was sampled at the Facility on June 17, 2016, was leaking oil containing PCBs at a concentration of 1500 ppm.

36. The leaking PCB transformer was stored indoors along the western side of the main processing building at Respondent's facility in an area that did not comply with 40 C.F.R. § 761.65(b). This area is therefore considered a temporary storage area.

37. The leaking PCB transformer was not placed in a non-leaking PCB Container (as defined under 40 C.F.R. § 761.3) containing sufficient sorbent materials to absorb any liquid PCBs remaining in the PCB transformer.

38. Respondent's failure to store a leaking PCB transformer in an area that complies with 40 C.F.R. § 761.65(b) is a violation of 40 C.F.R. § 761.65(c)(1) and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty

39. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator to take into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, when determining the amount of civil penalty for violations of TSCA.

40. Based upon the facts alleged in this CAFO, the factors listed in Section 16(a)(2)(B) of TSCA, EPA's PCB Penalty Policy (April 9, 1990), and Respondent's good faith and cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$9,793.

41. Within 30 days after the effective date of this CAFO, Respondent must pay the \$9,793 civil penalty for the TSCA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

42. A transmittal letter, stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Scott Bessler (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Josh Zaharoff (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

44. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring a civil action to collect any unpaid portion of the penalty with interest under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

45. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO: interest that will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of Treasury pursuant to 31 U.S.C.

§ 3717; a \$15 handling charge each month that any portion of the penalty is more than 30 days past due; and a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

46. The parties consent to service of this CAFO by email at the following valid email addresses: zaharoff.josh@epa.gov (for Complainant) and mplank@emeraldtransformer.com (for Respondent).

47. Respondent's full compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

49. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state, or local laws and permits.

50. Respondent certifies that it is complying with TSCA and its implementing regulations, including the following:

- a. Transformers received at the Facility will be classified as in use, stored for reuse, or stored for disposal at all times, as required by the PCB Rule.
- b. Transformers in use, stored for reuse, and stored for disposal will be stored according to the applicable use, storage, and recordkeeping provisions of 40 C.F.R §§ 761.30, 761.35, and 761.65.
- c. Mineral oil-filled transformers manufactured before July 2, 1979, and whose PCB concentration is not established will be assumed to be PCB-Contaminated Electrical Equipment.

d. Transformers manufactured prior to July 2, 1979 that contain at least 3 lbs of fluid other than mineral oil and whose PCB concentration is not established will be assumed to be PCB Transformers.

51. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and EPA’s PCB Penalty Policy.

52. The terms of this CAFO bind Respondent and its officers, directors, agents, servants, employees, and successors or assigns.

53. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

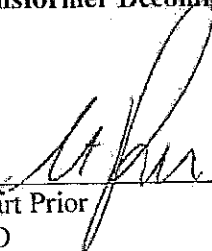
54. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

56. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of:
Transformer Decommissioning Inc.
Docket No. TSCA-05-2019-0004

Transformer Decommissioning Inc., Respondent

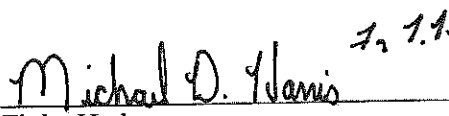


Stuart Prior
CEO
Transformer Decommissioning Inc.

10/31/18

Date

United States Environmental Protection Agency, Complainant



Tinka Hyde
Director
Land and Chemicals Division
United States Environmental Protection Agency, Region 5

11/15/2018

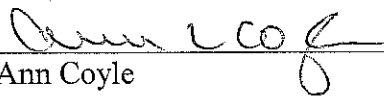
Date

In the Matter of:

**Transformer Decommissioning Inc.
Docket No. TSCA-05-2019-0004**

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By:  Date: 11/15/18
Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the matter of: Transformer Decommissioning, Inc.
Docket Number: TSCA-05-2019-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on November 23, 2018, in the following manner to the following addressees:

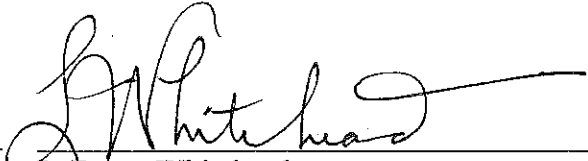
Copy by E-mail to Respondent: Ms. Jessica Pennington
Director of Safety and Compliance
Transformer Decommissioning, Inc.
9722 Barker Drive
Nabb, Indiana 47147

jpennington@emeraldtransformer.com

Copy by E-mail to
Attorney for Complainant: Josh Zaharoff
Zaharoff.Josh@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: November 23, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5