



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

July 11, 2022

ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Steven Sunkel & Gerald Forsythe
LLC Members
CropMax II LLC
1000 N. 14th Street
Charleston, Illinois 61920
stevesunkel@gmail.com & gforsythe@newmidwestgroup.com

Re: Consent Agreement and Final Order
Crop Max II LLC
Docket No: **TSCA-05-2022-0007**

Dear Mr. Sunkel and Mr. Forsythe:

Attached please find a copy of the signed, full executed Consent Agreement and Final Order in resolution of the above case. The original was filed with the Regional Hearing Clerk on July 11, 2022.

Please pay the civil penalty in the amount of \$5,000 in the manner described in paragraphs 37 through 39 of the CAFO, and reference all checks with the docket number TSCA-05-2022-0007. The payment is due within 30 calendar days of the effective date of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

Julie Morris

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Morris
Date: 2022.07.11
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Julie Morris, Manager
Land Enforcement and Compliance Assurance Branch

Enclosure

cc: Mr. Paul Eisenbrandt, Illinois EPA (paul.eisenbrandt@illinois.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. TSCA-05-2022-0007
)	
Crop Max II, LLC)	Consent Agreement and Final Order
Charleston, IL)	Under Section 16 (a) of the Toxic
)	Substances Control Act,
U.S. EPA ID No.:)	15 U.S.C. § 2615 (a)
)	
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.1(a)(5), 22.13(b), 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3).

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Crop Max II, LLC (Respondent), a limited liability company doing business in the State of Illinois.

4. According to 40 C.F.R. § 22.13(b), 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).

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.

Jurisdiction and Waiver of Right to Hearing

6. Jurisdiction for this action is conferred upon U.S. EPA by Section 16 of TSCA, 42 U.S.C. § 2615(a).

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. At all times relevant to this Complaint, Respondent Crop Max II, LLC was a limited liability company operating under the laws of the State of Illinois, with a place of business at 1000 North 14th Street, Charleston, Illinois.

10. EPA lawfully promulgated the Polychlorinated Biphenyls (PCB) Disposal and Marking regulations pursuant to Section 6(e)(1) of TSCA, 15 U.S.C. § 2605(e)(1), on February 17, 1978 (43 FR 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use regulations (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 recodified at 40 C.F.R. Part 761.

Factual and Legal Allegations

11. 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.

12. Respondent is the owner and operator of the facility at 1000 North 14th Street, Charleston, Illinois.

13. On July 30, 2020, a representative of the EPA inspected Respondent's facility located at 1000 North 14th Street, Charleston, Illinois (facility).
14. At the time of the inspection, Respondent had four PCB transformers at its facility.
15. Respondent's four PCB transformers are nameplated as containing PCBs and each contains 257 gallons of PCBs in concentrations greater than 500 parts per million (ppm).
16. At the time of the inspection, Respondent's four PCB transformers were stored for reuse.
17. Respondent's four PCB transformers are PCB articles as defined at 40 C.F.R. § 761.3.
18. Respondent's PCB articles are PCB items as defined at 40 C.F.R. § 761.3.

Alleged Violations

Count I: Improper Recordkeeping (2018)

19. The PCB rule at 40 C.F.R. § 761.180(a) required, *inter alia*, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time one or more PCB transformers develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) (subsequently amended at 54 Fed. Reg. 52716 [December 21, 1989] to include recordkeeping and reporting requirements applicable beginning February 5, 1990).
20. On July 30, 2020 Respondent was storing four PCB transformers at its facility.
21. On July 30, 2020 Respondent had not developed and maintained complete records and did not have annual documents on the disposition of its PCB items for calendar year 2018.

22. Respondent's failure to develop and maintain records and annual documents for calendar year 2018 constitutes a violation of 40 C.F.R. § 761.180(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count II: Improper Recordkeeping (2019)

23. The PCB rule at 40 C.F.R. § 761.180(a) required, *inter alia*, that, effective July 2, 1978, each owner or operator of a facility using or storing at one time one or more PCB transformers develop and maintain records on the disposition of PCBs and PCB items. These records form the basis of annual PCB documents, to be prepared for each facility by July 1, covering the previous calendar year. 43 Fed. Reg. 7150 (February 17, 1978) (subsequently amended at 54 Fed. Reg. 52716 [December 21, 1989] to include recordkeeping and reporting requirements applicable beginning February 5, 1990).

24. On July 30, 2020 Respondent was storing four PCB transformers at its facility.

25. On July 30, 2020 Respondent had not developed and maintained complete records and did not have annual documents on the disposition of its PCB items for calendar year 2019.

26. Respondent's failure to develop and maintain records and annual documents for calendar year 2019 constitutes a violation of 40 C.F.R. § 761.180(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count III: Improper Use (2018)

27. The PCB rule at 40 C.F.R. Part 761, Appendix B(III), Interim Measures Program, 46 Fed. Reg. 16090 (March 10, 1981) [subsequently codified as amended at 40 C.F.R. § 761.30(a)(1)(ix)], requires that beginning May 11, 1981, a visual inspection of each PCB transformer that is in use or stored for reuse within an area that has impervious secondary

containment greater than or equivalent to the volume of dielectric fluid contained in the transformers, must be performed at least once a year. Commencing August 10, 1981, records of transformer inspections and maintenance history were to be developed and maintained at least three years after disposing of the PCB transformer(s).

28. During calendar year 2018, Respondent owned four PCB transformers that were stored for reuse within an area that has impervious secondary containment greater than or equivalent to the volume of dielectric fluid contained in the transformers.

29. During calendar year 2018, Respondent did not perform a visual inspection of its four PCB transformers.

30. On July 30, 2020, Respondent did not have records of transformer inspections or maintenance history for its PCB transformers for year 2018.

31. Respondent's failure to conduct inspections of its PCB transformers during calendar year 2018 and maintain records of such inspections constitutes a violation of 40 C.F.R. Part 761, Appendix B(III), Interim Measures Program; 40 C.F.R. § 761.30(a)(1)(ix), and Section 15 of TSCA, 15 U.S.C. § 2614.

Count IV: Improper Use (2019)

32. The PCB rule at 40 C.F.R. Part 761, Appendix B(III), Interim Measures Program, 46 Fed. Reg. 16090 (March 10, 1981) subsequently codified as amended at 40 C.F.R. § 761.30(a)(1)(ix), requires that beginning May 11, 1981, a visual inspection of each PCB transformer that is in use or stored for reuse within an area that has impervious secondary containment greater than or equivalent to the volume of dielectric fluid contained in the transformers, must be performed at least once a year. Commencing August 10, 1981, records of

transformer inspections and maintenance history were to be developed and maintained at least three years after disposing of the PCB transformer(s).

33. During calendar year 2019, Respondent owned four PCB transformers that were stored for reuse within an area that has impervious secondary containment greater than or equivalent to the volume of dielectric fluid contained in the transformers

34. During calendar year 2019, Respondent did not perform a visual inspection of its four PCB transformers.

35. On July 30, 2020, Respondent did not have records of transformer inspections or maintenance history for its PCB transformers for year 2019.

36. Respondent's failure to conduct inspections of its PCB transformers during calendar year 2019 and maintain records of such inspections constitutes a violation of 40 C.F.R. Part 761, Appendix B(III), Interim Measures Program; 40 C.F.R. § 761.30(a)(1)(ix), and Section 15 of TSCA, 15 U.S.C. § 2614.

Civil Penalty Order

37. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615 Complainant determined that an appropriate civil penalty to settle this action is **\$5,000**. In determining the penalty amount, Complainant took into account the above factual allegations, the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and other factors as justice may require. Complainant also considered U.S. EPA's PCB Civil Penalty Policy, dated April 9, 1990 [55 FR 13955].

38. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$5,000** civil penalty for the RCRA violations 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

The check must state Respondent's name and the docket number of this CAFO.

39. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Or via email at whitehead.ladawn@epa.gov

Land Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5
R5lecab@epa.gov

Kwai Philpott (ECR-17J)
Land Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Or via email at zolnierczyk.kenneth@epa.gov

Robert Guenther
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Or via email at guenther.robert@epa.gov

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

41. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity,

amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. 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 payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). 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

43. Respondent certifies that it is complying fully with the statutory and regulatory provisions alleged violated in this CAFO.

44. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant), and stevesunkel@gmail.com or jschroeder@bswlawfirm.com (for Respondent).

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

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

47. Payment of the civil penalty does not affect Respondent's continuing obligation to comply with RCRA and other applicable federal, state, local laws or permits.

48. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and U.S. EPA's TSCA Civil Penalty Policy.

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

50. 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.

51. Each party agrees to bear its own costs and attorney's fees in this action.

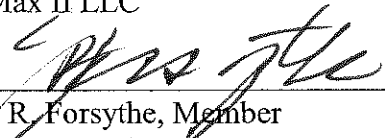
52. This CAFO constitutes the entire agreement between the parties.

Crop Max II LLC, Respondent

5/14/2022
Date


Steven R. Sunkel, Member
Crop Max II LLC

05/11/2022
Date


Gerald R. Forsythe, Member
Crop Max II LLC

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.07.06
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance
Division

In the Matter of:
Crop Max II LLC
Docket No. TSCA-05-2022-0007

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.

ANN COYLE

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Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: CropMax II LLC
Docket Number: **TSCA-05-2022-0007**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number TSCA-05-2022-0007, which was filed on July 11, 2022, in the following manner to the following addressees:

Copy by e-mail to Respondent: CropMax II LLC
Steven Sunkel & Gerald Forsythe
Primary LLC Members
stevesunkel@gmail.com &
gforsythe@newmidwestgroup.com

Copy by e-mail to Attorney for Respondent: Bennett Schroeder & Wieck
Joseph Schroeder
jschroeder@bswlawfirm.com

Copy by e-mail to Attorney for Complainant: Robert Guenther
guenther.robert@epa.gov

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

Dated: _____
Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5