



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

DEC - 8 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. B. Hart Knight  
Miller & Martin, PLLC  
1200 One Nashville Place  
150 Fourth Avenue North  
Nashville, Tennessee 37219

SUBJ: Arab Electric Cooperative, Inc.  
Executed Consent Agreement and Final Order  
TSCA-04-2010-2908(b)

Dear Mr. Knight:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CAFO) for Arab Electric Cooperative, Inc. The CAFO was effective upon filing.

Thank you for your cooperation in this matter. If you have any questions, please contact Stanley Tam, of this office, by telephone at (404) 562-8577 or by email at [tam.stanley@epa.gov](mailto:tam.stanley@epa.gov).

Sincerely,

A handwritten signature in black ink that reads "Dee Stewart".

Dee Stewart, Acting Chief  
RCRA & OPA Enforcement and  
Compliance Branch  
RCRA Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Arab Electric Cooperative, Inc. )  
331 S Brindlee Mountain Parkway )  
Arab, Alabama 35016 )  
 )  
Respondent )  
\_\_\_\_\_ )

Docket No. TSCA-04-2010-2908(b)

RECEIVED - 3 MAY 03  
MILWAUKEE OFFICE

**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 (EPA). Respondent is Arab Electric Cooperative, Inc.
2. 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**

3. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated rules 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 \$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.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Stanley Tam  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-8577

## **III. Specific Allegations**

6. Respondent is a generator of PCB waste operating in the State of Alabama and is a "person" as defined in 40 C.F.R. § 761.3.
7. On or about January 14, 2010, an inspection was conducted at by the Alabama

Department of Environmental Management (ADEM) at Respondent's facility located at 331 South Brindlee Mountain Parkway, Arab, Alabama, to determine compliance with the PCB regulations.

8. 40 C.F.R. § 761.65(a)(1) requires facilities to complete disposal of PCB items (such as transformers) in storage within one year. Ten (10) transformers, including nine (9) PCB-Contaminated Transformers and one (1) PCB Transformer, that had been in storage, were not disposed of within one year. Therefore, Respondent violated 40 C.F.R. § 761.65(a)(1).
9. 40 C.F.R. § 761.65(b)(1)(iv) requires PCB Storage Areas to have floors and curbing which prevent or minimize penetration of PCBs. Respondent's PCB storage building had an unsealed crack in the floor. Therefore, Respondent violated 40 C.F.R. § 761.65(b)(1)(iv).
10. 40 C.F.R. § 761.65(c)(5) requires inspection of PCB Items in storage for leaks at least once every thirty (30) days and transfer of any leaking PCB Items and their contents to non-leaking containers. Respondent failed to inspect three (3) PCB-Contaminated Transformers. Two (2) transformers [assumed to be PCB-Contaminated per 40 C.F.R. § 761.2(a)(2)] were leaking and the dielectric fluid from these transformers were not transferred to non-leaking containers. All leaking transformers discussed herein were located inside the PCB storage building. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(5).
11. 40 C.F.R. § 761.180(a) requires certain facilities to develop and maintain a written annual document log. This includes facilities that used or stored at least 45 kilograms of PCBs contained in PCB Containers or one or more PCB Transformers. From 2005 to 2009, at

least four (4) PCB Transformers were stored in Respondent's PCB storage building at various times. Respondent did not develop and maintain a written annual document log. Therefore, Respondent violated 40 C.F.R. § 761.180(a).

12. 40 C.F.R. § 761.207(a) requires that shipments of PCB Items be documented on hazardous waste manifests. A total of thirteen (13) transformers, including twelve (12) PCB-Contaminated Transformers and one (1) PCB Transformer, were transported in three separate shipments using non-hazardous waste manifests. Therefore, Respondent violated 40 C.F.R. § 761.207(a).
13. 40 C.F.R. § 761.218(d)(1) requires generators of PCB waste to keep a copy of each Certificate of Disposal that they receive from disposers of PCB waste. During the inspection, copies of Certificates of Disposal were not available in Respondent's records for twelve (12) transformers. Therefore, Respondent violated 40 C.F.R. § 761.218(d)(1).
14. Respondent asserts that there have been no releases of PCBs into the environment as a result of any of these alleged violations. Based on the inspection report from ADEM and information presented by Respondent, EPA is not presently aware of any release of PCBs into the environment as a result of the violations.

#### **IV. Consent Agreement**

15. 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.
16. 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.
17. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

18. Respondent certifies that, to the best of its knowledge, information, and belief, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
19. 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 the 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 ELEVEN THOUSAND DOLLARS (\$11,000), 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  
PO 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.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

Contact: Natalie Pearson (314) 418-4087

23. 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

Stanley Tam  
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

24. 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.

25. 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.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. The undersigned representative of each party 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**

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

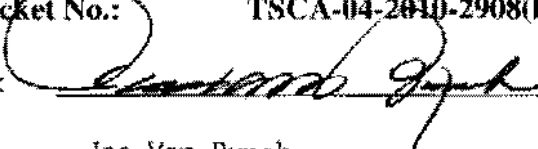
*Remainder of page left intentionally blank*



**AGREED AND CONSENTED TO:**

**Respondent:** Arab Electric Cooperative, Inc.

**Docket No.:** TSCA-04-2010-2908(b)

By:  (Signature) Date: 11-3-10

Name: Joe Van Bunch (Typed or Printed)

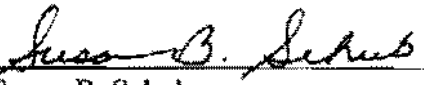
Title: General Manager (Typed or Printed)

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

By:  Date: 11/23/10

G. Alan Farmer  
Director  
RCRA Division  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 6<sup>th</sup> day of December, 2010.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of: Arab Electric Cooperative, Inc., Docket No. TSCA-04-2010-2908(b), and served same on the date shown below, to the parties listed in the manner indicated:

Michiko Kono  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, 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. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(via EPA's internal mail)

B. Hart Knight  
Miller & Martin, PLLC  
1200 One Nashville Place  
150 Fourth Avenue North  
Nashville, Tennessee 37219

(via Certified Mail  
Return Receipt requested)

Date: 12-8-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 12/3/11  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                      | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                              | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|  | <input type="checkbox"/> This is a modification  |

PAYEE: Arab Electric Cooperative Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 11,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: \_\_\_\_\_

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date: \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20544 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |