

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Berea Municipal Utility)
200 Harrison Road)
Berea, Kentucky 40403)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2911(b)

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HEARINGS CLERK

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 Berea Municipal Utility.
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. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. 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 represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Kris Lippert
RCRA/OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8605

III. Specific Allegations

6. Respondent is a Generator of Polychlorinated Biphenyl (PCB) Waste operating in the Commonwealth of Kentucky and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about December 10, 2008, an inspection was conducted at Respondent’s facility located at 200 Harrison Road, in Berea, Kentucky, to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs.
8. 40 C.F.R. § 761.65(c)(8) requires that PCB Items (such as PCB-Contaminated transformers) must be marked with the date when they were removed from service for disposal. At the time of inspection, five (5) PCB-Contaminated transformers were stored in the PCB storage area. None of these PCB-Contaminated transformers were marked with the date the PCB waste was removed from service. Therefore, Respondent is in violation of 40 C.F.R. § 761.65(c)(8).

9. 40 C.F.R. § 761.65(c)(5) requires that PCB Items (such as PCB-Contaminated transformers) in storage for disposal shall be checked for leaks at least once every 30 days. 40 C.F.R. § 761.180(a)(1)(iii) requires records of inspections and cleanups performed in accordance with 40 C.F.R. § 761.65(c)(5). At the time of inspection, five (5) PCB-Contaminated transformers were stored in the PCB storage area. Respondent had no records documenting that these PCB-Contaminated transformers had been checked for leaks at least once every 30 days. Therefore, Respondent is in violation of 40 C.F.R. § 761.65(c)(5) and 40 C.F.R. § 761.180(a)(1)(iii).

IV. Consent Agreement

9. 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.
10. 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.
11. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
12. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
13. 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.
14. 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

15. Respondent is assessed a civil penalty of SEVENTEEN HUNDRED and SEVENTY-THREE DOLLARS (\$1,773.00), which shall be paid within 30 days from the effective date of this CAFO.
16. 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, 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 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, MO 63101

Contact: Natalie Pearson (314) 418-4087

17. 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;

and

Kris Lippert
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

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.

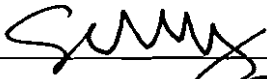
20. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
21. This CAFO shall be binding upon the Respondent, its successors and assigns.
22. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date


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

AGREED AND CONSENTED TO:

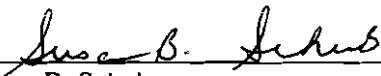
Respondent: Berea Municipal Utility
Docket No.: TSCA-04-2009-2911(b)

By:  (Signature) Date: 4-28-09
Name: Steven Connelly (Typed or Printed)
Title: Mayor (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 5/19/09
G. Alan Farmer, Director
RCRA Division

APPROVED AND SO ORDERED this 28th day of May, 2009.

By: 
Susan B. Schub
Regional Judicial Officer