

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Fisk University

EPA ID No.: TNR000001818

Respondent.

Docket No. **TSCA-04-2023-3200(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is Fisk University, located at 1000 17th Avenue North, Nashville, Tennessee 37208.

III. GOVERNING LAW

6. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to 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 Section 15 of TSCA, 15 U.S.C. § 2614, may be assessed a civil penalty in accordance with Section 16(a) of

TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation.

7. The term “Facility” is defined in 40 C.F.R. § 761.3, as all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of PCB waste. A facility may consist of one or more treatment, storage, or disposal units.
8. The term “PCB(s)” is defined in 40 C.F.R. § 761.3, as any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
9. The term “PCB Transformer” is defined in 40 C.F.R. § 761.3, as any transformer that contains ≥ 500 parts per million (ppm) PCBs.
10. The term “PCB-Contaminated” is defined in 40 C.F.R. § 761.3, as a non-liquid material containing PCBs at concentrations ≥ 50 ppm but < 500 ppm; a liquid material containing PCBs at concentrations ≥ 50 ppm but < 500 ppm or where insufficient liquid material is available for analysis, a non-porous surface having a surface concentration > 10 micrograms per centimeter squared ($\mu\text{g}/100\text{ cm}^2$) but $< 100\ \mu\text{g}/100\text{ cm}^2$, measured by a standard wipe test as defined in § 761.123.
11. The term “PCB Equipment” is defined in 40 C.F.R. § 761.3, as any manufactured item, other than a PCB Container or a PCB Article Container which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.
12. The term “PCB-Contaminated Electrical Equipment” is defined in 40 C.F.R. § 761.3, as any electrical equipment including, but not limited to, transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contains PCBs at concentrations of ≥ 50 ppm and < 500 ppm in the contaminating fluid. In the absence of liquids, electrical equipment is PCB-Contaminated if it has PCBs at $> 10\ \mu\text{g}/100\text{ cm}^2$ and $< 100\ \mu\text{g}/100\text{ cm}^2$ as measured by a standard wipe test (as defined in § 761.123) of a non-porous surface.
13. The term “Retrofill” is defined in 40 C.F.R. § 761.3, as any means to remove PCB or PCB-contaminated dielectric fluid and to replace it with either non-PCB, PCB-contaminated, or non-PCB dielectric fluid.

IV. FINDINGS OF FACTS

14. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A), Respondent notified the EPA on February 16, 2009, that it had one PCB Transformer located on campus at or near the John Hope & Aurelia E. Franklin Library.
15. On May 24, 2022, the Tennessee Department of Environment and Conservation (TDEC), acting in its capacity as an authorized agent of the EPA, conducted an inspection of the campus and the PCB Transformer pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, to determine Respondent’s compliance with the PCB regulations.
16. At the time of the inspection, the TDEC inspector observed a transformer with a nameplate that

indicated it was a General Electric Pyranol pad-mounted PCB Transformer with serial number F-964372 containing 300 gallons of dielectric fluid, located outside of the John Hope & Aurelia E. Franklin Library. The transformer also bore a label that read “Test Certificate PCB-Contaminated Equipment; Certification Number 189350 by United Power Service, Incorporated.”

17. During the inspection, the TDEC inspector asked the campus representative for records or certificates showing that the PCB Transformer had been reclassified as a PCB-Contaminated Transformer; however, the representative was unaware of any such documentation and was not familiar with PCB requirements under 40 C.F.R Part 761.
18. Under 40 C.F.R. §§ 761.30(a)(2)(v) or 761.30(h)(2)(v), an owner or operator of a PCB Transformer can drain and rinse PCB fluids from the transformer and replace it with mineral dielectric fluid in an effort to reduce the PCB concentration below 500 ppm and thereby reclassify the PCB Transformer as a PCB-Contaminated Transformer.
19. Pursuant to 40 C.F.R. § 761.180(g), an owner or operator who reclassifies electrical equipment using the procedures set forth in 40 C.F.R. §§ 761.30(a)(2)(v) or 761.30(h)(2)(v), must keep records showing that they followed the required reclassification procedures. Where these procedures require testing, the records must include copies of pre- and post-reclassification PCB concentration measurements from a laboratory using quality control and quality assurance procedures. The owner or operator must make these records available promptly to the EPA or to any party possessing the equipment through sale, loan, lease, or for servicing. The owner or operator must retain the records for at least 3 years after the equipment is sold or disposed.
20. At the time of TDEC’s inspection, Respondent, as the owner and operator of the General Electric Pyranol Transformer located outside the campus library that appeared to have been reclassified, was unable to provide any reclassification records pertaining to the transformer as required by 40 C.F.R. § 761.180(g).
21. On November 30, 2022, Respondent’s consultant collected a sample of the fluid from the transformer. Analytical sampling results indicated that the transformer contained 229 ppm PCBs, and was, therefore, no longer classified as a PCB Transformer, but as a PCB-Contaminated Transformer.

V. ALLEGED VIOLATIONS

22. The EPA alleges that Respondent failed to maintain and to provide to the TDEC inspector or to the EPA reclassification records for the General Electric Pyranol Transformer described in Section IV above, in violation of 40 C.F.R. § 761.180(g) and Section 15 of TSCA, 15 U.S.C. § 2614.

VI. STIPULATIONS

23. The issuance of this CAFO simultaneously commences and concludes this proceeding pursuant to 40 C.F.R. § 22.13(b).
24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of the CAFO.

26. Respondent reserves its rights to dispute the findings of fact and alleged violations in any future proceedings other than enforcement of this CAFO.

27. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

28. Respondent is assessed a civil penalty of **TWO-THOUSAND, SIX-HUNDRED DOLLARS (\$2,600.00)**, which shall be paid within thirty (30) days of the Effective Date of this CAFO.
29. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and Docket Number for this matter shall be referenced on the face of the check. If Respondent(s) send(s) payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties 1005
Convention Plaza Mail Code: SL-MO-
C2-GL St. Louis, Missouri 63101
Contact number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33 33
Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection
Agency CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

30. Respondent shall send electronic proof of payment within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
R4_Regional_Hearing_Clerk@epa.gov

and

Kris Lippert
U.S. EPA Region 4
lippert.kristin@epa.gov

31. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2023-3200(b).
32. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- a. **Interest.** Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. **Non-Payment Penalty.** On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. **Monthly Handling Charge.** Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
33. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review. Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
34. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

35. This CAFO constitutes a settlement by the EPA of all claims for federal civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged herein.
36. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
37. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
38. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
39. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
40. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
41. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers,

- directors, employees, agents, trustees, authorized representatives, successors, and assigns.
42. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
 43. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 42 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA) or personally identifiable information.
 44. By signing this Consent Agreement, Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
 45. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
 46. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
 47. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
 48. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
 49. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

50. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Fisk University**, Docket No. TSCA-04-2023-3200(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT, Fisk University:



Signature

2/23/2023
Date

Printed Name: David C. Cobb

Title: Director, Office of Facilities Development

Address: 1000 17th Ave N, Nashville, TN 37208

The foregoing Consent Agreement In the Matter of **Fisk University**, Docket No. **TSCA-04-2023-3200(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Fisk University

EPA ID No.: TNR000001818

Respondent.

Docket No. **TSCA-04-2023-3200(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Fisk University**, Docket No. **TSCA-04-2023-3200(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: David Cobb
 Director of Facilities
 Fisk University
 1000 17th Avenue North
 Nashville, Tennessee 37208
 (615) 329-8849
 dgcobb@fisk.edu

To EPA: Kris Lippert
 Senior Enforcement Officer
 lippert.kristin@epa.gov

 Robert Caplan
 Senior Attorney
 caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960