

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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ENVIRONMENTAL

In the Matter of:)
)
Fairhope Public Utilities)
55 South Section Street)
Fairhope, Alabama 36533)
)
Respondent)
_____)

Docket No. TSCA-04-2010-2910(b)

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 Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is the Fairhope Public Utilities.
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 \$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:

Houston Gilliland, Jr.
South Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8617

III. Specific Allegations

6. Respondent is a user of Polychlorinated Biphenyl (PCB) Items operating in the State of Alabama and is a "person" as defined in 40 C.F.R. § 761.3.
7. Pursuant to 40 C.F.R. § 761.3, PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
8. Pursuant to 40 C.F.R. § 761.3, PCB Article means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes, but is not limited to, transformers.
9. On or about May 4, 2009, an inspection was conducted at Respondent's facility located at 55 South Section Street, Fairhope, Alabama to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs.
10. At the time of the inspection, leaking transformers stored for disposal were staged on spill control pallets located inside a small room in the service truck garage that has access doors to the parking lot and to the interior of the garage. The outer doors were observed to have been recently repainted. However, the markings for PCB storage had not been replaced. The interior doors, to which the painters did not have access, bore a label reading "Warning, PCB contaminants". However, this label was not a PCB Large Mark as required by 40 C.F.R. § 761.45. Therefore, Respondent has violated 40 C.F.R. § 761.40(a)(10).
11. During the inspection, Respondent was unable to produce records of inspections, maintenance, cleanup or disposal, or produce the annual logs which are required to be maintained under 40 C.F.R. §§ 761.180(a) and (b). Therefore, Respondent violated 40 C.F.R. §§ 761.180(a) and (b).

IV. Consent Agreement

12. 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.
13. 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.

14. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
15. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of Section 6(e) of TSCA.
16. 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.
17. 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

18. Respondent is assessed a civil penalty of **ONE THOUSAND EIGHT HUNDRED Dollars (\$1,800)** which shall be paid within 30 days from the effective date of this CAFO.
19. 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
P.O. Box 979077
St. Louis, Missouri 63197-9000

**The check shall reference on its face the name of the
Fairhope Public Utilities and Docket Number TSCA-04-2010-2910(b)**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

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

Contact: Natalie Pearson (314) 418-4087

20. 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, S.W.
Atlanta, Georgia 30303-8960

Houston Gilliland, Jr.
South Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

21. 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.
22. 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.
23. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
24. This CAFO shall be binding upon the Respondent, its successors and assigns.
25. 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 to legally bind that party to this CAFO.

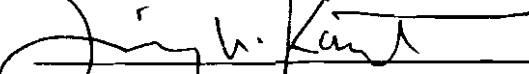
VII. Effective Date

26. 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: Fairhope Public Utilities

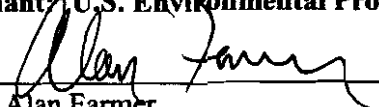
Docket No.: TSCA-04-2010-2910(b)

By:  (Signature) Date: 9-7-10

Name: TIMOTHY M. KANT (Typed or Printed)

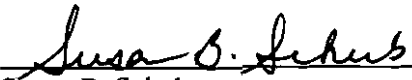
Title: MAYOR, CITY OF FAIRHOPE (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 9/9/10

G. Alan Farmer
Director
Resource, Conservation and Recovery Act
Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 14th day of Sept., 2010.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Fairhope Public Utilities, Docket Number: TSCA-04-2009-2910(b), to the addresses listed below.

Mr. Scott Sligh
Fairhope Public Utilities
Post Office Box 429
Fairhope, Alabama 36533

(via Certified Mail, Return Receipt Requested)


Robert Caplan
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Quantindra Smith
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Date: 9-14-10



Patricia Bullock, Regional Hearing Clerk
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511