



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 23 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robin Wade
Wade Sand & Gravel Company, Inc.
1200 10th Street W
Birmingham, Alabama 35208

SUBJ: Wade Sand & Gravel Company, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2015-2904(b)

Dear Mr. Wade:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Wade Sand & Gravel Company, Inc., on notice of their potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions or concerns, please contact Kris Lippert, of my staff, at (404) 562-8605.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
STANDARD
MAY 13 2015

In the Matter of:)
)
Wade Sand & Gravel Company, Inc.)
1200 10th Street W)
Birmingham, Alabama 35208)
)
Respondent.)
_____)

Docket No. TSCA-04-2015-2904(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 Restoration Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Wade Sand & Gravel Company, Inc. (WSG).
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the

Director of the Resource Conservation and Restoration Division by EPA Region 4
Delegation 12-2-A, dated January 30, 2015 . Pursuant to that Delegation, the Director of the
Resource Conservation and Restoration Division has the authority to commence an
enforcement Action as the Complainant in this matter and has the authority to sign Consent
Agreements memorializing settlements between the EPA and Respondent.

3. 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

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated
regulations 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 \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009,
in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. 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.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service
for EPA in this proceeding:

Kris Lippert
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8605

III. Specific Allegations

6. Respondent was a user of PCB Items operating in the State of Alabama and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about January 31, 2013, and April 5, 2013, inspections were conducted at Respondent’s facility located at 1200 10th Street W, Birmingham, Alabama, to determine compliance with the PCB regulations.
8. During the January 31, 2013, inspection, Respondent was storing for disposal a Precipitator/Rectifier B363290 with a PCB concentration of 412 ppm; a Precipitator/Rectifier 13363288-27 with a PCB concentration of 220 ppm; a Westinghouse PCB Transformer 588606 with a PCB concentration of greater than 500 ppm; a drained Westinghouse PCB Transformer 3162419-30; a drained Westinghouse PCB Transformer 3162420-32; a drained Westinghouse PCB Transformer 3162412-34; a 50 gallon tote of PCB liquid with a PCB concentration greater than 500 ppm; and two (2) large capacitors with PCB concentrations greater than 500 ppm.
9. During the January 31, 2013, inspection, the following PCB Items were observed to have leaks on the outside of the items: the Precipitator/Rectifier B363290 with a PCB concentration of 412 ppm; the Westinghouse Transformer 588606 with a PCB concentration

of greater than 500 ppm; the drained Westinghouse PCB Transformer 3162419-30; the drained Westinghouse PCB Transformer 3162420-32; and the drained Westinghouse PCB Transformer 3162412-34.

10. 40 C.F.R. § 761.3 defines PCB Items as 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.
11. 40 C.F.R. § 761.65(c)(5) requires all PCB Items in storage to be checked for leaks at least once every 30 days and records of those inspections to be maintained in accordance with 40 C.F.R. § 761.180(a) and (b). At the time of the January 31, 2013 inspection, the inspectors requested documentation showing inspections on the PCB Items listed in paragraph 8 above, however, no documentation was provided to the inspectors. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(c) (5) and 40 C.F.R. § 761.180(a) and (b).
12. 40 C.F.R. § 761.180(a) requires a written annual document log and annual records for anyone that uses or stores at any one time at least 45 kilograms of PCBs contained in PCB Container(s), or one or more PCB Transformers. The log must be prepared by July 1 for the previous calendar year and maintained for three years after PCBs are ceased being used or stored. During the January 31, 2013, inspection, no written annual document log and/or annual records were available nor was any evidence presented that Respondent had kept the required log. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.180(a).
13. Pursuant to 40 C.F.R. § 761.65(b), PCBs and PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. At the

time of the January 31, 2013, inspection, Respondent was storing the PCB Items listed in paragraph 8 above for disposal in areas that did not meet the requirements of 40 C.F.R. § 761.65(b). Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(b).

14. 40 C.F.R. § 761.40(a)(1) requires that PCB Articles at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked, shall be marked with an M_L marking as illustrated in the figure in 40 C.F.R. § 761.45(a). At the time of the inspection, the PCB Items listed in paragraph 8 above were not marked with the appropriate PCB label. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(1).

15. Pursuant to 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked in accordance with 40 C.F.R. § 761.45(a). At the time of the inspection, Respondent was storing for disposal the PCB Items listed in paragraph 8 above in areas that did not meet the requirements of 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3). Therefore, EPA alleges that Respondent violated 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3).

16. 40 C.F.R. § 761.65(c)(8) requires that PCB Items be marked with the date when they were removed from service for disposal. At the time of the inspection, the PCB Items listed in paragraph 8 above being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(8).

17. 40 C.F.R. § 761.65(a)(1) requires that any PCB waste must be disposed of as required by Subpart D of the PCB regulations within 1-year from the date it was determined to be PCB

waste and the decision was made to dispose it. During the January 31, 2013, inspection, Respondent could not provide any documentation showing how long the PCB Items listed in paragraph 8 above that were being stored for disposal had been out of service, nor could Respondent demonstrate that the PCB Items had been out of service less than one year. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(a)(1).

18. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs greater or equal to 50 ppm constitute disposal of PCBs. Pursuant to 40 C.F.R. § 761.125(c), spills of PCBs must be cleaned up and properly disposed. At the time of the January 31, 2013, inspection, the following PCB Items were observed to be stained with oil that contained PCBs: Precipitator/Rectifier B363290 with a PCB concentration of 412 ppm; the Westinghouse Transformer 588606 with a PCB concentration of greater than 500 ppm; the PCB drained Westinghouse Transformer 3162419-30; the PCB drained Westinghouse Transformer 3162420-32; and the PCB drained Westinghouse Transformer 3162412-34. Also, at the time of the inspection, the concrete surrounding the Precipitator/Rectifier B363290 and the soil surrounding the Precipitator/Rectifier B363290 with a PCB concentration of 412 ppm were stained with oil. Therefore, because Respondent had not cleaned up and properly disposed of the PCB leaks, EPA alleges that Respondent violated 40 C.F.R. § 761.125(c).
19. On December 29, 2016, Respondent submitted to EPA a “Self-Implementing Onsite Cleanup and Disposal Implementation Report” (“Report”) for the uncontrolled discharges of PCBs described above.
20. On February 14, 2017, EPA sent a letter to Respondent stating that based on the information

contained in the report, it appears that the cleanup was completed in accordance with the EPA-approved work plan and that no further cleanup or land use restrictions will be required at this time.

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
22. 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.
23. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
24. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
25. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. 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.
26. 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

27. Respondent is assessed a civil penalty of **FORTY-TWO THOUSAND SEVEN HUNDRED AND TWENTY-TWO DOLLARS (\$42,722.00)**, which shall be paid within 30 days from the effective date of this CAFO.

28. Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

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 delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

**Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency.”**

29. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) 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
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

30. 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.

31. 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.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. Each undersigned representative of the parties 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

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

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AGREED AND CONSENTED TO:

Respondent: Wade Sand & Gravel Company, Inc.

Docket No.: TSCA-04-2015-2904(b)

By: Robin Wade (Signature) Date: 4/18/17

Name: Robin Wade (Typed or Printed)

Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Alan Farmer Date: 5/9/17

G. Alan Farmer, Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 16th day of May, 2017.

By: Tanya Floyd

Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for Wade Sand & Gravel Company, Inc., Docket Number: TSCA-04-2015-2904(b), on 5-23-17, and on 5-23-17, served the parties listed below in the manner indicated:

Lucia Mendez (Via EPA Internal Mail)
Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Robert Caplan (Via EPA Internal Mail)
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Kris Lippert (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Mr. Robin Wade (Via Certified Mail – Return Receipt Requested)
Wade Sand & Gravel Company, Inc.
1200 10th Street W
Birmingham Alabama 35208

Date:

5-23-17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511