

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Georgia Power Company

EPA ID No.: GAD060662301

Respondent.

Docket No. **TSCA-04-2022-3204(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* (Consolidated Rules), 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 Georgia Power Company (Respondent), an electrical utility company operating in the State of Georgia. Georgia Power Company operates a facility located at 62 Lake Mirror Road, Forest Park, Georgia 30297 (Facility).
6. The Facility focuses on the distribution of new equipment and maintenance of used power distribution electrical equipment. The Facility also stores used electrical equipment, including transformers, for reuse.

III. GOVERNING LAW

7. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to PCBs. Failure to comply with any such rule or regulation 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.
8. 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.
9. The term “PCB” or “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.
10. The term “PCB Transformer” is defined in 40 C.F.R. § 761.3, as any transformer that contains ≥ 500 parts per million (ppm) PCBs.
11. 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 $> 10 \mu\text{g}/100 \text{ cm}^2$ but $< 100 \mu\text{g}/100 \text{ cm}^2$, measured by a standard wipe test as defined in § 761.123.
12. The term “PCB Article Container” is defined in 40 C.F.R. § 761.3, as any package, can, bottle, bag, barrel, drum, tank, or other device used to contain PCB Articles or PCB Equipment, and whose surface(s) has not been in direct contact with PCBs.
13. The term “PCB Container” is defined in 40 C.F.R. § 761.3, as any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
14. 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 ballast and fixtures.
15. The term “PCB Article” is defined in 40 C.F.R. § 761.3, as 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 capacitors, transformers, electric motors, pumps, pipes and any other manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.
16. The term “PCB Items” is defined in 40 C.F.R. § 761.3, 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.

17. The term "Annual Document Log" is defined in 40 C.F.R. § 761.3, as the detailed information maintained at a facility on the PCB waste handling at the facility.
18. 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 $\mu\text{g}/100$ cm^2 and < 100 $\mu\text{g}/100$ cm^2 as measured by a standard wipe test (as defined in 40 C.F.R. § 761.123) of a non-porous surface.
19. Pursuant to 40 C.F.R. § 761.2(a)(2), any person must assume that mineral oil-filled electrical equipment that was manufactured before July 2, 1979, and whose PCB concentration is not established is PCB-Contaminated Electrical Equipment. All pole-top and pad-mounted transformers manufactured before July 2, 1979, must be assumed to be mineral-oil filled. Any person may assume that electrical equipment manufactured after July 2, 1979, is non-PCB. If the date of manufacture of mineral oil-filled electrical equipment is unknown, any person must assume it to be PCB-Contaminated.
20. Pursuant to 40 C.F.R. § 761.35(a)(1)-(2), an owner or operator of a PCB Article is allowed to store it for reuse in an area which is not designed, constructed, and operated in compliance with 40 C.F.R. § 761.65(b), for no more than five years after the date the Article was originally removed from use, if the owner or operator complies with the following conditions: (1) Follows all use requirements at 40 C.F.R. § 761.30 and the marking requirements of Subpart C of 40 C.F.R. Part 761 that are applicable to the PCB Article; and (2) Maintains records starting at the time the PCB Article is removed from use. The records must indicate: (i) the date the PCB Article was removed from use; (ii) the projected location and the future use of the PCB Article; (iii) if applicable, the date the PCB Article is scheduled for repair or servicing.
21. Pursuant to 40 C.F.R. § 761.180(a), each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms of PCBs contained in PCB Containers, or one or more PCB Transformers, or 50 or more PCB large high or low voltage capacitors, shall develop and maintain at the facility, or a central facility provided they are maintained at that facility, all annual records and the written Annual Document Log of the disposition of PCB and PCB Items.

IV. FINDINGS OF FACTS

22. On December 17, 2021, an inspector with the EPA conducted a PCB inspection at the Facility to ensure compliance with Section 15 of the TSCA, 15 U.S.C. § 2614, and the PCB regulations promulgated in 40 C.F.R. Part 761.
23. At the time of inspection, the EPA inspector observed that Respondent was storing transformers for reuse that were manufactured before July 2, 1979, and whose PCB concentrations were not established. Therefore, pursuant to 40 C.F.R. § 761.2(a)(2), the transformers are presumed to be PCB-Contaminated Electrical Equipment. During the inspection, the EPA did not observe any

evidence of a leak, spill, or other release.

24. During the inspection, the EPA obtained copies of Respondent's records pertaining to the transformers being stored for reuse.
25. Based on the inspection and review of Respondent's records, the EPA determined that since September of 2019, Respondent had a contract with a third-party to purchase Respondent's used transformers. The third-party used or disposed of the transformers.
26. Based on the inspection and review of Respondent's records, the EPA determined that from 2019 to 2021, Respondent stored used transformers at the Facility that contain ≥ 500 ppm PCBs. In accordance with 40 C.F.R. § 761.3, these transformers, that contain ≥ 500 ppm PCBs, are PCB Transformers. Pursuant to 40 C.F.R. § 761.3, PCB Transformers are considered to be PCB Articles and PCB Items.
27. Based on the inspection and review of Respondent's records, the EPA determined that from 2019 to 2021, Respondent stored used transformers that are presumed to be PCB-Contaminated Electrical Equipment. In accordance with to 40 C.F.R. § 761.3, the transformers, as PCB-Contaminated Electrical Equipment, are considered to be PCB Articles and PCB Items.
28. From 2019 to 2021, until the third-party took possession of the used transformers, Respondent stored the used transformers at the Facility.
29. Based on the inspection and review of the records, the EPA determined that Respondent was storing for reuse PCB Articles, but failed to maintain the storage for reuse records, as required by 40 C.F.R. § 761.35(a)(2), for 2019, 2020 and 2021.
30. Based on the inspection and review of the records, the EPA determined that Respondent had not maintained complete annual records or complete Annual Documents Log for the disposition of PCB and PCB Items, as required by 40 C.F.R. § 761.180(a), for 2019 and 2020.

V. ALLEGED VIOLATIONS

31. The EPA alleges that Respondent failed to maintain storage for reuse records for PCB Articles for 2019, 2020 and 2021, in violation of 40 C.F.R. § 761.35(a)(2).
32. The EPA alleges that Respondent failed to maintain the annual records and Annual Document Log for the disposition of PCB and PCB Items for 2019 and 2020, in violation of 40 C.F.R. § 761.180(a).

VI. STIPULATIONS

33. The issuance of this CAFO simultaneously commences and concludes this proceeding pursuant to 40 C.F.R. § 22.13(b).
34. 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.

35. 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 agrees 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.

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

37. 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

38. Respondent is assessed a civil penalty of **FIFTY-TWO THOUSAND THREE HUNDRED DOLLARS (\$52,300.00)**, which shall be paid within thirty (30) days of the Effective Date of this CAFO.

39. 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:

U.S. Environmental Protection Agency
P.O. Box 979078
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. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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
Beneficiary: 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, MD 20737
Remittance Express (REX): 1-866-234-5681

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
R4_Regional_Hearing_Clerk@epa.gov

and

Nicolas Haddad
TSCA Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
haddad.nicolas@epa.gov

41. "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-04-2022-3204(b).
42. 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.
43. 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 (*see* 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 (*see* 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 (*see* 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, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

44. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

- 45. 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.
- 46. 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).
- 47. 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.
- 48. 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.
- 49. 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 hazard as provided under the Act.
- 50. 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.
- 51. 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.
- 52. 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.

53. 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.
54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. 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

60. 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.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Georgia Power Company**, Docket No. **TSCA-04-2022-3204(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature  _____ Date 9/7/23 _____

Printed Name: Jennifer McNelly _____

Title: Vice President, Environmental Affairs _____

Address: 241 Ralph McGill Blvd., Atlanta, GA 30308 _____

The foregoing Consent Agreement In the Matter of Georgia Power Company, Docket No. TSCA-04-2022-3204(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Georgia Power Company
EPA ID No.: GAD060662301

Respondent.

Docket No. TSCA-04-2022-3204(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 **Georgia Power Company**, Docket No. **TSCA-04-2022-3204(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: Kimberley J. Hale
 Partner
 Kazmarek Mowrey Cloud Laseter LLP
 khale@kmcllaw.com

To EPA: Nicolas Haddad
 Case Development Officer
 haddad.nicolas@epa.gov

 Robert F. Summers
 Attorney-Advisor
 summers.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov