



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 09 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Gardner
Springfield Electric Department
718 Central Avenue
Springfield, Tennessee 37172

SUBJ: Consent Agreement and Final Order
Docket No.: TSCA-04-2009-2906(b)

Dear Mr. Gardner:

Enclosed is the executed Consent Agreement and Final Order (CAFO) for the Springfield Electric Department Toxic Substances Control Act (TSCA) case. The effective date for the CAFO is stated in Section VI of the CAFO.

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

Sincerely,

A handwritten signature in black ink, appearing to read "G. Alan Farmer".

G. Alan Farmer, Director
RCRA Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Springfield Electric Department)
718 Central Avenue)
Springfield, Tennessee 37172)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2906(b).

2009 JUN -9 PM 3:31
REASONS CLERK
EPA REGION 4

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 Springfield Electric Department.
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 and 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 State of Tennessee and is a "person" as defined in 40 C.F.R. § 761.3.
7. On or about March 13, 2008, an inspection was conducted at Respondent's facility located at 718 Central Avenue, in Springfield, Tennessee, 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 (with PCB concentrations of 50 ppm or greater) must be marked with the date when they were removed from service for disposal. At the time of the inspection, a PCB transformer (764 mg/kg Arochlor 1254) and a PCB-contaminated transformer (444 mg/kg Arochlor 1260) were stored in a wooden shed with a metal secondary containment pan. Three (3) transformers (concentrations ranging from 166-239 mg/kg Arochlor 1260) were stored out-side directly on the asphalt. None of these five (5) transformers were marked with the date they were removed from service. Therefore, Respondent is in violation of 40 C.F.R. § 761.65(c)(8).
9. 40 C.F.R. § 761.40(a)(10) as incorporated by 40 C.F.R. § 761.65(c)(3) requires that each storage area used to store PCB Items (with PCB concentrations of 50 ppm or greater) for disposal be marked with an M_i as illustrated in Figure 1 in § 761.45(a). The exterior of the wooden storage shed and the area where the three (3) PCB-Contaminated transformers were stored were not marked with a PCB label at the time of the inspection. Therefore, SED is in violation of 40 C.F.R. § 761.40(a)(10) as incorporated by 40 C.F.R. § 761.65(c)(3).
10. 40 C.F.R. § 761.65(c)(5) requires that PCB Items (with PCB concentrations of 50 ppm or greater) 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 the inspection, a PCB transformer (764 mg/kg Arochlor 1254) and a PCB-contaminated transformer (444 mg/kg Arochlor 1260) were stored in a wooden shed with a metal secondary containment pan. Three (3) transformers (concentrations ranging from 166-239 mg/kg Arochlor 1260) were stored out-side directly on the asphalt. Respondent had no records documenting that these 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).

11. 40 C.F.R. § 761.180(a) requires 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 (99.4 pounds) 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. During the inspection, annual document logs showing the disposition of PCBs and PCB Items were not being maintained at the facility. Therefore, SED is in violation of 40 C.F.R. § 761.180(a).
12. 40 C.F.R. § 761.65(b) requires that PCB Items (with PCB concentrations of 50 ppm or greater) 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 inspection, SED was storing three (3) PCB-Contaminated transformers for disposal outside on asphalt. Therefore, SED is in violation of 40 C.F.R. § 761.65(h).

IV. Consent Agreement

13. 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.
14. 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.
15. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
17. 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.

18. 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

19. Respondent is assessed a civil penalty of SEVENTY-SEVEN HUNDRED and THIRTY-SEVEN DOLLARS (\$7,737.00), which shall be paid within 30 days from the effective date of this CAFO.
20. 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

21. 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.

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


26. 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

27. 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: Springfield Electric Department
Docket No.: TSCA-04-2009-2906(b)

By:  (Signature) Date: 5-19-09


Name: Billy P. Carneal (Typed or Printed)

Title: City Mayor (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 6/8/2009
G. Alan Farmer, Director
RCRA Division

APPROVED AND SO ORDERED this 9th day of June, 2009.

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 Springfield Electric Department, Docket Number: TSCA-04-2009-2906(b), to the addresses listed below.

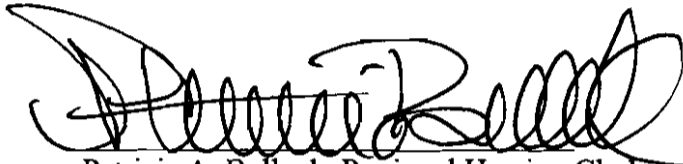
Mr. Robert Gardner
Spring Electric Department
718 Central Avenue
Springfield, Tennessee 37172

(via Certified Mail, Return Receipt Requested)

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

(via EPA's internal mail)

Date: 6-9-09



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511