



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 22, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL 7009 1680 0000 7668 1698
RETURN RECEIPT REQUESTED

Mr. Scott Goldberg
Hartford Iron & Metal, Inc.
209 South Division Street
Hartford City, Indiana 47348

Consent Agreement and Final Order In the Matter of
Hartford Iron & Metal, Inc., Docket No. TSCA-05-2013-0014

Dear Mr. Goldberg:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 22, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$189,580 is to be paid in the manner described in paragraphs 64 and 65. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by September 23, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kendall Moore".

for Kendall Moore
Pesticides and Toxic Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:)

HARTFORD IRON & METAL, INC.)
Hartford City, Indiana)

Respondent.)

Docket No. TSCA-05-2013-0014

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)



CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is a civil administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA) Region 5.
3. The Respondent is Hartford Iron & Metal Inc., 209 South Division Street, Hartford City, Indiana, a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO, solely for purposes of settlement and without admission of liability or any factual allegations set forth herein.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Polychlorinated Biphenyls (PCBs) Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations (PCB rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated previous disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

10. According to 40 C.F.R. § 761.50(a)(3), no person may discharge water containing PCBs to a treatment works, as defined in 40 C.F.R. § 503.9(aa), or to navigable waters unless the PCB concentration is less than 3 µg/L (approximately 3 parts per billion (ppb)) or unless the discharge is in accordance with a discharge limit included in a permit issued under Sections 307(b) or 402 of the Clean Water Act.

11. According to 40 C.F.R. § 761.40(a)(10), each storage area used to store PCBs and PCB Items for disposal must be marked with an M_L, as illustrated in figure 1 in 40 C.F.R. § 761.45(a).

12. According to 40 C.F.R. § 761.65(c)(8), for the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater, PCB Items shall be dated on the item when they are removed from service for disposal.

13. According to 40 C.F.R. § 761.65(b)(2), for the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater, no person may store PCBs or PCB items for disposal in a storage unit other than one approved pursuant to 40 C.F.R. § 761.65(d) or meeting the design requirements of 40 C.F.R. § 761.65(b), unless the storage unit meets one of the following six conditions: (1) it is permitted by EPA under section 3004 of RCRA to manage hazardous waste in containers, and spills of PCBs are cleaned up in accordance with 40 C.F.R. Part 761, Subpart G; (2) it qualifies for interim status under section 3005 of RCRA to manage hazardous waste in containers, meets the requirements for containment at 40 C.F.R. § 264.175, and spills of PCBs are cleaned up in accordance with 40 C.F.R. Part 761, Subpart G; (3) it is permitted by a State authorized under section 3006 of RCRA to manage hazardous waste in containers, and spills of PCBs are cleaned up in accordance with 40 C.F.R. Part 761, Subpart G; (4) it is approved or otherwise regulated pursuant to a State PCB waste management program, no less stringent in protection of health or the environment than the applicable TSCA requirements in 40 C.F.R. Part 761; (5) it is subject to a TSCA Coordinated Approval, which included provisions for storage of PCBs, issued pursuant to 40 C.F.R. § 761.77; or (6) it has a TSCA PCB waste management approval, which includes provisions for storage, issued pursuant to 40 C.F.R. § 761.61(c) or § 761.62(c).

14. The Administrator of EPA may assess a civil penalty of up to \$32,500 per day for each violation of TSCA that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation of TSCA that occurred after January 12, 2009, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

General Factual Allegations

15. At all times relevant to this CAFO, Respondent was a “person” as defined at 40 C.F.R. § 761.3.

16. At all times relevant to this CAFO, Respondent operated the facility at 209 South Division Street, Hartford City, Indiana (Facility).

17. On May 24, 2010, Indiana Department of Environmental Management (IDEM) inspectors, representing U.S. EPA under a cooperative agreement, inspected Respondent's facility to determine compliance with the PCB rule.

18. Respondent discharges storm water through a storm water drain outside the Facility which leads to the Hartford City Waste Water Treatment Plant.

19. Storm water discharged from the Facility either reaches the Hartford City Waste Water Treatment Plant or, in a sewer overflow condition, reaches navigable waters.

20. The Hartford City Waste Water Treatment Plant is a publically owned device or system used to treat either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

21. The Hartford City Waste Water Treatment Plant is a "treatment works" as defined at 40 C.F.R. § 503.9(aa).

22. Respondent has a permit to discharge, issued pursuant to the Clean Water Act, but the permit does not contain discharge limits for PCBs.

23. From at least March 30, 2006 until September 2, 2010, Respondent stored at the Facility three piles containing approximately 1,270 cubic yards of soil and debris.

24. Sampling of the three soil piles at Respondent's Facility on December 21, 2009 showed that the piles of soil and debris contained PCBs with concentrations ranging from 4.75-439 ppm.

25. The three soil and debris piles are "PCB Items," as that term is defined at 40 C.F.R. § 761.3.

26. In January 2013, Respondent began operation of a treatment system for storm water pursuant to Industrial Wastewater Pretreatment (IWP) Permit No. INP000612. On January 10, April 27, and May 17, 2013, Respondent had unintentional discharges of storm water from its facility outside the treatment system. Respondent submitted a written plan in June 2013 to the Indiana Department of Environmental Management identifying tasks to prevent recurrence.

Count I - Improper Disposal

27. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

28. On May 17, 2010, Respondent discharged storm water to a storm water drain outside the Facility.

29. A sample of the water entering the storm water drain from the Facility on May 17, 2010, contained 14.1 µg/L PCB.

30. Respondent's discharge of water containing more than 3 µg/L PCB to a treatment works or to navigable waters constitutes improper disposal of PCBs in violation of 40 C.F.R. § 761.50(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count II - Improper Disposal

31. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

32. On April 7, 2010, Respondent discharged storm water to a storm water drain outside the Facility.

33. A sample of the water entering the storm water drain from the Facility on April 7, 2010, contained 6.95 µg/L PCB.

34. Respondent's discharge of water containing more than 3 µg/L PCB to a treatment works or to navigable waters constituted an improper disposal of PCBs in violation of 40 C.F.R. § 761.50(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count III - Improper Disposal

35. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

36. On July 8, 2010, Respondent discharged storm water to a storm water drain outside its facility.

37. A sample of the water entering the storm water drain from the Facility on July 8, 2010, contained 4.81 µg/L PCB.

38. Respondent's discharge of water containing more than 3 µg/L PCB to a treatment works or to navigable waters constituted an improper disposal of PCBs in violation of 40 C.F.R. § 761.50(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count IV - Improper Disposal

39. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

40. On December 12, 2011, Respondent discharged storm water to a storm water drain outside its facility.

41. A sample of the water entering the storm water drain from the Facility on December 12, 2011, contained 4.89 µg/L PCB.

42. Respondent's discharge of water containing more than 3 µg/L PCB to a treatment works or to navigable waters constituted an improper disposal of PCBs in violation of 40 C.F.R. § 761.50(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count V - Improper Disposal

43. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

44. On January 24, 2012, Respondent discharged storm water to a storm water drain outside its facility.

45. A sample of the water entering the storm water drain from the Facility on January 24, 2012, contained 5.64 µg/L PCB.

46. Respondent's discharge of water containing more than 3 µg/L PCB to a treatment works or to navigable waters constituted an improper disposal of PCBs in violation of 40 C.F.R. § 761.50(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.

Count VI- Improper Marking

47. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

48. The three soil and debris piles at Respondent's Facility temporarily stored PCBs that were designated for disposal.

49. The three soil and debris piles at Respondent's Facility were in "storage for disposal" as that phrase is defined at 40 C.F.R. § 761.3.

50. On May 24, 2010, Respondent had not marked the areas where the three soil and debris piles were stored with an M_L label.

51. Between August 26, 2010 and September 2, 2010, Respondent disposed of the three soil and debris piles in an approved disposal facility.

52. Respondent's failure to mark the areas where the three soil and debris piles were stored with an M_L label constituted a violation of 40 C.F.R. § 761.40(a)(10).

Count VII - Improper Storage

53. The general factual allegations of this CAFO are incorporated by reference as though set forth here in full.

54. Beginning no later than December 21, 2009 until at least August 26, 2010, Respondent's piles of soil and debris were removed from service.

55. On May 24, 2010, Respondent had not dated the three soil and debris piles with the dates that they were removed from service.

56. Respondent's failure to place a date of removal from service on its three soil piles containing approximately 1,270 cubic yards of soil and debris designated for disposal constituted a violation of 40 C.F.R. § 761.65(c)(8).

Count VIII - Improper Storage

57. The general factual allegations of the CAFO are incorporated by reference as though set forth here in full.

58. Respondent stored the three soil and debris piles on a soil surface, with no roof, walls, or curbing.

59. Respondent did not store its three piles containing approximately 1,270 cubic yards of soil and debris in an area approved by 40 C.F.R. § 761.65(d), or meeting the design requirements of 40 C.F.R. § 761.65(b).

60. Respondent's storage of the three soil and debris piles does not meet any one of the six conditions listed in 40 C.F.R. § 761.65(b)(2).

61. Respondent's failure to store its PCBs in a unit approved pursuant to 40 C.F.R. § 761.65(d), meeting the design requirements of 40 C.F.R. § 761.65(b), or meeting one of the conditions of 40 C.F.R. § 761.65(b)(2), constituted a violation of 40 C.F.R. § 61.65(b)(2).

CIVIL PENALTY

62. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator, to take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, when determining the amount of civil penalty for violations of TSCA.

63. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 16(a)(2)(B) of TSCA, and Respondent's good faith and cooperation in resolving this matter, Complainant determined that an appropriate civil penalty to settle this action is \$189,580.

64. Within 30 days of the effective date of this CAFO, Respondent must pay a \$189,580 civil penalty for the TSCA violations. Respondent must pay the penalty by sending by first class mail a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Hartford Iron & Metal, Inc.," the docket number of this CAFO, and the billing document (BD) number.

65. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kendall Moore (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mony Chabria (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

66. This civil penalty is not deductible for federal tax purposes.

67. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

68. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

69. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

70. This CAFO does not 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.

71. This CAFO does not affect Respondent's responsibilities to comply with TSCA and other applicable federal, state, and local laws.

72. This CAFO is a "final order" for purposes of EPA's Polychlorinated Biphenyls (PCB) Penalty Policy.

73. The terms of this CAFO bind Respondent, its successors, and assigns.

74. Each person signing this agreement certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

75. Each party agrees to bear its own costs and attorney fees in this action.

76. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Hartford Iron & Metal, Inc.

Hartford Iron & Metal, Inc., Respondent


7-30-13
Date

Scott Goldberg
Name: Scott Goldberg
Title: Vice President
Hartford Iron & Metal, Inc.

**In the Matter of:
Hartford Iron & Metal, Inc.**

United States Environmental Protection Agency, Complainant

August 15, 2013
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Hartford Iron & Metal, Inc.
Docket No. TSCA-05-2013-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/20/13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5




CERTIFICATE OF SERVICE

This is to certify that one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Hartford Iron & Metal, Inc., was filed on August 22, 2013, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 1698 to:

Mr. Scott Goldberg
Hartford Iron & Metal, Inc.
209 South Division Street
Hartford City, Indiana 47348

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mony Chabria, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2013-0014

