



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

Mr. Roger Bouldin  
Bristol Broadcasting Company, Inc.  
901 East Valley Drive  
Bristol, Virginia 24201

SEP 16 2010

Re: Bristol Broadcasting Company, Inc.  
Consent Agreement and Final Order - Docket No. TSCA-04-2010-2902(b)

Dear Mr. Bouldin:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) issued pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). Please be aware that the civil penalty payment is due 30 days after the effective date of the CAFO, which is the date upon which it was filed with the Regional Hearing Clerk.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-8976, or contact Brian Gross at (404) 562-8604, if you have any additional questions or comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

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RECEIVED  
EPA REGION 4

In the Matter of: )  
)  
Bristol Broadcasting Company )  
901 East Valley Drive )  
Bristol, Virginia 24201 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No. TSCA-04-2010-2902(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 (RCRA) Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Bristol Broadcasting Company.
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:

Brian O. Gross  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-8604

## **III. EPA's Findings of Fact and Specific Allegations**

6. Respondent is a generator and/or storer of Polychlorinated Biphenyl (PCB) Items operating in the State of Kentucky and is a "person" as defined in 40 C.F.R. § 761.3.
7. On or about June 2-3, 2009, an inspection was conducted by representatives of the

Kentucky Department of Environmental Protection (KYDEP) at the Respondent's facility in Paducah, Kentucky, to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs. During the inspection, KYDEP observed that Respondent had two large, low-voltage capacitors in storage.

8. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB items must be marked with the date of removal from service. Respondent had not marked the capacitors with the date of removal from service.
9. Pursuant to 40 C.F.R. § 761.65(a)(1), PCB waste shall be disposed of within one year from the date it was determined to be PCB waste. Upon their removal from service in 2004, the capacitors became PCB waste. The capacitors were not disposed of within one year of their becoming PCB waste.
10. Pursuant to 40 C.F.R. § 761.65(c)(1), PCB handlers may store PCB items in temporary storage areas [i.e., storage areas that do not fully comply with 40 C.F.R. § 761.65(b)] for 30 days. The capacitors were stored in an area that did not comply with 40 C.F.R. § 761.65(b) for longer than 30 days at the Bristol Broadcasting's WDXR facility.
11. Pursuant to 40 C.F.R. § 761.65(c)(5), PCB items must be checked for leaks at least once every 30 days. There were no records or evidence that the PCB storage area was inspected for leaks at least once every 30 days.

#### **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. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of the nature of the alleged violation, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00).
15. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in Section V of this CAFO, and also agrees to perform the SEP as set forth below.
16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA and the PCB regulations found in 40 C.F.R. Part 761.
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 ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00), 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  
P.O. Box 979077  
St. Louis, Missouri 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, Missouri 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

Brian O. Gross  
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. Supplemental Environmental Project (SEP). Respondent shall undertake and complete the following SEP which the parties agree are intended to secure significant environmental benefits:
- a. Environmental Compliance Promotion
- Respondent shall coordinate with the Kentucky Broadcasters Association (the "KBA") to conduct a telephone seminar/conference call to raise awareness of the issues involving equipment and components containing PCBs and giving instructions on how to inspect, store, and dispose of any components containing PCBs in accordance with the Toxic

Substances Control Act and the Polychlorinated Biphenyl regulations (40 C.F.R. Part 761). The seminar will address how to identify equipment and components that may contain PCBs and what must be done in the event such components are found. A panel of experts and persons knowledgeable about PCBs in broadcast equipment and components will also be asked to take part in the seminar. The equipment manufacturing representative will be asked to discuss the types and vintages of equipment that are likely to have components containing PCBs and how manufacturers can point to specific year models of their equipment that contain no PCBs. The representatives of the KYDEP and/or the expert on PCBs will be asked to give instruction on how to remain in compliance with Toxic Substances Control Act and the Polychlorinated Biphenyl regulations when PCBs are found to exist in equipment or components. This will include procedures for:

- Periodically inspecting components/equipment that are in active use and have been found to contain PCBs.
- Documentation when removing components from service.
- Proper maintenance and storage of PCB waste (components that have been removed from service).
- Periodically checking stored PCB waste for leaks.
- Properly disposing of PCB waste.
- Record keeping related to the removal, cleanup and disposal of PCB waste.

25. Respondent will complete the SEP no later than 120 days after the effective date of this CAFO, while spending the minimum amount of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00).



26. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.
27. Respondent shall submit the following documentation to Mr. Gross at the address listed in paragraph 5 regarding the progress and completion of the SEP:
- a. A final report no later than thirty (30) days after the completion of the SEP. This report shall include a signed confirmation from an authorized company official which shall state that the SEP was completed as proposed and as set forth in this CAFO, or explaining in detail any failure to complete or any deviation and/or modification to the SEP.
  - b. The report shall include an itemized list and documentation of the cost of implementing the SEP
  - c. Upon request, Respondent shall send EPA any additional documentation concerning implementation of the SEP within ten (10) business days from receiving EPA's written request by letter or email.
28. Failure to submit the SEP Completion Report or any progress report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 34 below unless otherwise waived by EPA.
29. Respondent agrees that EPA may inspect Respondent's facility and review all records associated with the SEP projects, at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the SEP as set forth herein and in Attachment A.
30. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that as of this date, it has not

received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action.

31. If the Respondent fails to timely and fully complete any part of either SEP, including the failure to spend the minimum amount of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00), Respondent shall pay to the United States a stipulated penalty of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600), except as follows:

- a. If the SEP was fully and timely completed, and Respondent expended at least NINETY PERCENT (90%) of the total amount required, Respondent shall not pay a stipulated penalty.
- b. If the SEP was not fully and timely completed, but Respondent spent at least NINETY PERCENT (90%) of the total amount required, Respondent shall not pay a stipulated penalty if it made good faith effort to fully and timely complete the SEP.
- c. If the SEP was fully and timely completed, but Respondent spent less than NINETY PERCENT (90%) of the total amount required, Respondent shall pay the difference between the amount spent and four thousand five hundred dollars . For purposes of this paragraph, determination as to whether the Respondent has fully and timely completed the SEP and whether Respondent has made a good faith effort to do so shall be at the sole discretion of EPA. For purposes of this section, Respondent may submit to EPA for its consideration, any information, documentation or other evidence explaining the circumstances under which either SEP was not fully or timely completed or expenditures were less than 90%.

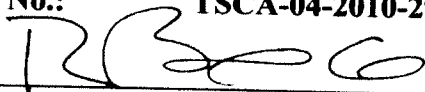
- 32. Any formal public statement, whether oral or written, made by Respondent making reference to the SEP shall include the following language, "These projects were undertaken in connection with the settlement of an enforcement action taken by U.S. Environmental Protection Agency for an alleged violation of Section 6(e) of TSCA, 15 U.S.C. § 2605".
- 33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 34. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 35. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into CAFO and legally binds that party to this CAFO.

**VII. Effective Date**

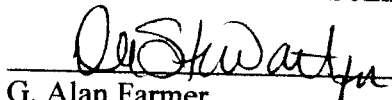
- 36. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

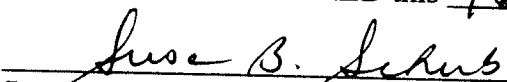
**Respondent:** Bristol Broadcasting Company  
**Docket No.:** TSCA-04-2010-2902(b)

By:  (Signature) Date: 8/23/2010  
 Roger Bouldin  
 Bristol Broadcasting Co.

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 9/15/10  
 G. Alan Farmer  
 Director, RCRA Division

**APPROVED AND SO ORDERED** this 16<sup>th</sup> 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 Bristol Broadcasting Company, Inc., Docket Number: TSCA-04-2010-2902(b), to the addressees listed below.

via Certified Mail, Return Receipt Requested

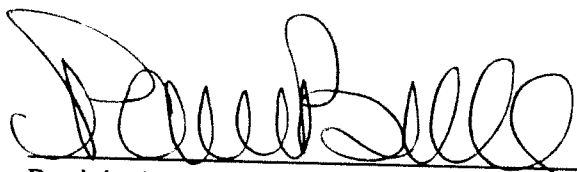
Roger Bouldin  
Bristol Broadcasting Company, Inc.  
901 East Valley Drive  
Bristol, Virginia 24201

via EPA's internal mail

Robert Caplan  
Senior Attorney  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth St. SW  
Atlanta, Georgia 30303

Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth St. SW  
Atlanta, Georgia 30303

Date: 9-16-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, Georgia 30303