



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 25 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kenneth H. Podpeskar
Bloomberg & Podpeskar LLP
2263 Waters Drive
Mendota Heights, Minnesota 55120

Re: Cannon Equipment Southeast, Inc.
Consent Agreement and Final Order - Docket No. TSCA-04-2012-2911(b)

Dear Mr. Podpeskar:

Enclosed please find a copy of the Consent Agreement and Final Order (CAFO) in the above-referenced matter. 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 Cannon Equipment Southeast, Inc. on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the U.S. Environmental Protection Agency.

If you have questions, please feel free to contact Paula A. Whiting, of my staff, at (404) 562-9277. Legal questions should be directed to Robert Caplan at (404)562-9520.

Sincerely,

A handwritten signature in black ink that reads "César A. Zapata".

César A. Zapata
Chief
RCRA and OPA Enforcement and Compliance
Branch
RCRA Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, TENNESSEE

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HEARING CLERK

In the Matter of:)
)
Cannon Equipment Southeast, Inc.)
950 Riverside Drive)
Chattanooga, Tennessee 37403)
)
)
Respondent)
_____)

Docket No. TSCA-04-2012- 2911(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 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. Respondent is Cannon Equipment Southeast, Inc.
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 the EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Resource Conservation and Recovery Act (RCRA) Division by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA 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 (CA/FO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such regulation 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.
5. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Paula A. Whiting
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9277

III. Specific Allegations

6. Respondent was the owner of PCB Items as defined by 40 C.F.R. § 761.3, operating in the State of Tennessee and is a “person” as defined in 40 C.F.R. § 761.3.

7. On or about September 15, 2011, an inspection was jointly conducted by representatives of the EPA and the Tennessee Department of Environment and Conservation (TDEC) at the Respondent's facility located at 950 Riverside Drive, in Chattanooga, Tennessee, to determine compliance with the PCB regulations. At the time of the inspection the facility was in operation.
8. Pursuant to the requirements set forth in 40 C.F.R. §§ 761.40(k)(1) and (2), PCB items must be marked with the "M_L" mark as illustrated in 40 C.F.R. § 761.45(a). During the September 15, 2011, inspection, the inspectors observed three unmarked PCB transformers in the Machine Shop Substation and a bank of eight unmarked PCB capacitors in the locked Old Boiler Room. Also, the entrance to the Old Boiler Room, which contained PCB equipment, was unmarked. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. §§ 761.40(k)(1) and (2).
9. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(1), certain PCB Items such as non-leaking PCB Articles and PCB Equipment may be stored temporarily in an area that does not comply with the requirements of 40 C.F.R. § 761.65 (b) of this section for up to thirty days from the date of their removal from service, provided that a notation is attached to the PCB Item or a PCB Container (containing the item) indicating the date the item was removed from service. During the September 15, 2011, inspection, the inspectors observed three PCB transformers in the Machine Shop Substation that had been disconnected, and therefore, stored for disposal. Also, the sixteen out-of-service PCB capacitors were stored for disposal in the exterior canopy section of the former Plating Operation Building. These units had no removed from service date notation attached to them. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(1).
10. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(2), non-leaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Electrical Equipment that have not been drained of free flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of 40 C.F.R. § 761.65(b). During the September 15, 2011, inspection, the sixteen out-of-service PCB capacitors were stored for disposal in the exterior canopy

section of the former Plating Operations Building. The exterior surfaces of the capacitors were weathered or corroding and covered by flaking paint, but no leaks or staining were observed on the ground surrounding the capacitors. However, the area where the PCB capacitors were being stored for disposal did not comply with the storage unit requirements nor was the area located adjacent to a storage area that meets the requirements of 40 C.F.R. § 761.65(b). Therefore, the EPA alleges that the Respondent violated the storage for disposal requirements set forth in 40 C.F.R. § 761.65(c)(2).

11. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(3), any storage area subject to the requirements of 40 C.F.R. § 761.65(b) or (c)(1) of this section shall be marked as required in 40 C.F.R. § 761.40(a)(10). During the September 15, 2011, inspection, the inspectors observed that two PCB storage areas, including the Machine Shop Substation and the exterior canopy section of the former Plating Operation Building, were unmarked. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(3).
12. Pursuant to the requirements set forth in 40 C.F.R. § 761.65(c)(5), PCB items being stored for disposal shall be checked for leaks at least once every 30 days. Records of inspection, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. § 761.180(a). During the September 15, 2011, inspection, Cannon failed to produce evidence that it had conducted the required PCB inspections or had maintained records of inspections, maintenance, cleanup and disposal for the out-service PCB capacitors and transformers. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(5) and 40 C.F.R. § 761.180(a).
13. Pursuant to the requirements set forth in 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, 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 PCBs and PCB Items. During the September 15, 2011, inspection, the inspectors observed there were no annual document logs or annual records

available at the time of inspection for the transformers and PCB capacitors. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.180(a).

14. Pursuant to the requirements set forth in 40 C.F.R. § 761.30(a)(1)(vi)(A), by no later than December 28, 1998, all owners of PCB transformers must register their transformers with the EPA. Pursuant to 40 C.F.R. § 761.30(a)(1)(C), a transformer owner must retain a record of each PCB transformer's registration (e.g., a copy of the registration and the return receipt signed by the EPA) with the inspection and maintenance records required for each PCB transformer under paragraph (a)(1)(xii)(I) of this section. During the September 15, 2011, inspection, the Respondent could not produce transformer registration records for the three Westinghouse transformers in the Front Office Bank, and the three Allis-Chalmers transformers in the Machine Shop Substation. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. §§761.30(a)(1)(vi)(A) and (C).

IV. Consent Agreement

15. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth in Paragraphs 1 and 2 above and neither admits nor denies the factual allegations set forth above.
16. 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.
17. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of the nature of the alleged violations and the factors set forth in section 16(a)(2)(B) of TSCA, the EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIXTY-TWO THOUSAND, SIX HUNDRED TWENTY DOLLARS (\$62,620).
18. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in Section V of this CAFO.
19. 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.

20. This CAFO constitutes a settlement by the 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, the 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 the EPA, and it is Respondent's responsibility to comply with said laws and regulations.
21. 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

22. Respondent is assessed a civil penalty of SIXTY-TWO THOUSAND SIX HUNDRED TWENTY DOLLARS (\$62,620), which shall be paid within 30 days from the effective date of this CAFO.
23. 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.

Alternatively, for payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), Respondent shall send the check to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

**The check shall reference on its face the name of the
Respondent and Docket Number of this CAFO.**

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

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

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

24. 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.
25. Pursuant to 31 U.S.C. § 3717, the 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.

26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. 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

29. 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: Cannon Equipment Southeast, Inc.
Docket No.: TSCA-04-2012-2911(b)

By: Jason K. Pitts (Signature) Date: 9-13-12
Name: Jason K. Pitts (Typed or Printed)
Title: VP Finance (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: G. Alan Farmer (Signature) Date: 9/18/12
G. Alan Farmer
Director
RCRA Division
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 24 day of Sept. 2012.

By: Susan B. Schub
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 Cannon Equipment Southeast, Inc. Docket Number: TSCA-04-2012-2911(b) to the addressees listed below.

~~via Certified Mail, Return Receipt Requested~~

Mr. Kenneth H. Podpeskar
Bloomberg and Podpeskar LLP
10 South Fifth Street, Suite 1005
Minneapolis, Minnesota 55402

via EPA's internal mail

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

via EPA's internal mail

Tammye Cross
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Date:

9-25-12



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