



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

SEP 28 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Christian Sterling  
Vice President of IT and Compliance  
Sterling Lumber Co., LLC.  
501 East 151st Street  
Phoenix, Illinois 60426

christian.sterling@sterlingsolutions.com

Consent Agreement and Final Order – In the Matter of:  
Sterling Lumber Co., LLC.  
Docket No. TSCA-05-2018-0015

Dear Mr. Sterling:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on 9/28/2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$19,271 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on the cashier's or certified check as described in paragraph 42. Additionally, please be certain that the notice of payment described in paragraph 43 states Respondent's name and the docket number. Payment is due 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 "S. Bessler", with a long horizontal line extending to the right.

Scott Bessler  
Pesticides and Toxics Compliance Section

Enclosure

cc: Robert Guenther, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



IN THE MATTER OF: )  
)  
STERLING LUMBER CO., LLC, )  
PHOENIX, ILLINOIS, )  
RESPONDENT. )  
\_\_\_\_\_ )

DOCKET NO. TSCA-05-2018-0015  
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 an administrative action commenced and concluded under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(d), 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 (the Consolidated Rules) as codified at 40 C.F.R. part 22.
2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. EPA Region 5.
3. Respondent is Sterling Lumber Company, Inc., an Illinois limited liability corporation, with a place of business at 501 East 151<sup>st</sup> Street, Phoenix, Illinois.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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 interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

**JURISDICTION AND WAIVER OF RIGHT TO HEARING**

7. Respondent admits jurisdictional allegations in this CAFO and waives any jurisdictional objections it may have. Respondent neither admits nor denies Complainant's factual allegations.

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. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of section 6 of TSCA, 15 U.S.C. § 2605, shall be liable to United States for a civil penalty in an amount not to exceed \$25,000 for each violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a civil penalty of up to \$38,114 per day for each violation of TSCA that occurred after November 2, 2015.

10. Section 6(e) of TSCA, 15 U.S.C. § 2615(e), requires the Administrator of U.S. EPA to issue regulations regarding the storage and disposal of polychlorinated biphenyls (PCBs), including requirements for marking, instructions for use and to generally regulate their processing, distribution in commerce, use and disposal.

11. The Polychlorinated Biphenyls 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 (known as the PCB rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule has been subsequently amended and is partially recodified at 40 C.F.R. part 761.

12. The PCB Rule, at 40 C.F.R. § 761.3, defines "disposal" as the intentional or accidental discarding, throwing away, or otherwise completing or terminating the useful life of the PCBs. The definition specifically includes spills, leaks and other uncontrolled discharges of PCBs.

13. The PCB Rule, at 40 C.F.R. § 761.3, defines "PCB Transformer" as: "any transformer that contains  $\geq 500$  ppm PCBs."

14. The PCB Rule, at 40 C.F.R. § 761.2(a)(3), designates a transformer manufactured prior to July 2, 1979, that contains three pounds or more of fluid other than mineral oil and whose PCB concentration is not established, as a PCB Transformer. If the date of manufacture and type of dielectric fluid are unknown, the transformer must be assumed to be a PCB Transformer.

#### GENERAL ALLEGATIONS

15. Respondent is a limited liability corporation organized under the laws of the State of Illinois, and is thus a "person" as defined at 40 C.F.R. § 761.3 and is subject to the prohibitions set forth at 40 C.F.R. part 761.

16. Respondent is the owner and operator of a facility at 501 E. 151<sup>st</sup> Street, Phoenix, Illinois (the "facility" or "Phoenix facility"), which manufactures wooden pallets, skids and heavy machinery matting. This facility employs several oil-filled transformers, six of them bearing nameplates relating that they are products of Allis-Chalmers and filled with

“Chlorextol,” a recognized trade name for PCB fluid manufactured by Allis-Chalmers. These transformers were each manufactured prior to July 2, 1979, and contain more than three pounds of liquid other than mineral oil.

17. On August 8, 2016, a representative from the State of Illinois inspected Respondent’s facility in Phoenix, Illinois, for compliance with the PCB Rule.

Count I – Violation of 40 C.F.R. § 761.60(a)

18. Complainant incorporates paragraphs 1 through 17 of this CAFO as though set forth in this paragraph.

19. The PCB Rule, at 40 C.F.R. § 761.60(a), requires that, with some stated exceptions, PCB liquids be disposed of in an incinerator that complies with 40 C.F.R. § 761.70.

20. On August 8, 2016, the inspector observed an oily stain in the same place at the facility where Respondent had maintained a nameplated Allis Chalmers transformer which, according to manifests, Respondent disposed of on June 18, 2015. The stain covered at least 20 square feet.

21. The stain described above contained PCBs in a concentration of 380 milligrams 100 cm<sup>2</sup>.

22. The stain described above constitutes “disposal” as that term is defined at 40 C.F.R. §761.3. This disposal did not occur in an incinerator which complies with 40 C.F.R. § 761.70.

23. Respondent’s disposal of PCBs without incinerating pursuant to 40 C.F.R. § 761.70 is a violation of 40 C.F.R. § 761.60(a) and entitles the Administrator to assess a penalty under section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a).

**Count II – Violation of 40 C.F.R. § 761.40(a)(2)**

24. Complainant incorporates paragraphs 1 through 17 of this CAFO as though set forth in this paragraph.

25. The PCB Rule, at 40 C.F.R. § 761.40(a)(2), requires that all means of access to areas containing PCB Transformers must bear the M<sub>L</sub> label detailed at 40 C.F.R. § 761.45, including vault doors, machinery room doors, fences, hallways and manhole covers.

26. On August 8, 2016, Respondent maintained an Allis-Chalmers nameplated transformer in a rooftop space identified as “Penthouse A.”

27. This Allis-Chalmers nameplated transformer in Penthouse A is a PCB Transformer.

28. On August 8, 2016, Respondent had not marked the door to Penthouse A with the appropriate M<sub>L</sub> label.

29. Respondent’s failure to mark the door to Penthouse A with an appropriate M<sub>L</sub> label is a violation of 40 C.F.R. § 761.40(a)(2) and entitles the Administrator to assess a penalty under section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a).

**Count III – Violation of 40 C.F.R. § 761.40(a)(2)**

30. Complainant incorporates paragraphs 1 through 17 of this CAFO as though set forth in this paragraph.

31. The PCB Rule, at 40 C.F.R. § 761.40(a)(2), requires that all means of access to areas containing PCB Transformers must bear the M<sub>L</sub> label detailed at 40 C.F.R. § 761.45, including the vault doors, machinery room doors, fences, hallways and manhole covers.

32. On August 8, 2016, Respondent maintained an Allis-Chalmers nameplated transformer in a rooftop space identified as “Penthouse C.”

33. This Allis-Chalmers nameplated transformer in Penthouse C is a PCB Transformer.

34. On August 8, 2016, Respondent had not marked the door to Penthouse C with the appropriate M<sub>L</sub> label.

35. Respondent's failure to mark the door to Penthouse C with an appropriate M<sub>L</sub> label is a violation of 40 C.F.R. § 761.40(a)(2) and entitles the Administrator to assess a penalty under section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a).

Count IV – Violation of 40 C.F.R. § 761.30(a)(1)(ix)

36. Complainant incorporates paragraphs 1 through 17 of this CAFO as though set forth in this paragraph.

37. The PCB Rule, at 40 C.F.R. § 761.30(a)(1)(ix), requires an owner or operator of PCB Transformers to perform quarterly inspections of all PCB Transformers for leaks of fluid from the transformer.

38. The six Allis-Chalmers nameplated transformers maintained by Respondent at its facility are PCB Transformers.

39. On August 8, 2016, Respondent admitted to the inspector that it had not previously regularly inspected the PCB Transformers at its facility for fluid leaks.

40. Respondent's use of PCB Transformers without conducting quarterly inspections for fluid leaks as required by 40 C.F.R. § 761.30(a)(1)(ix) entitles the Administrator to assess a penalty under section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a).

CIVIL PENALTY

41. Pursuant to section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Complainant determined that an appropriate civil penalty to settle this action is \$19,271. In

determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, any history of violations, the degree of Respondent's culpability and any other matters as justice may require. Complainant also considered Respondent's willingness to undertake the supplemental environmental project described below as well as EPA's Polychlorinated Biphenyls (PCBs) Penalty Policy (April 9, 1990).

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,271 civil penalty for the violations described in this CAFO by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the caption and the docket number of this CAFO.

43. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

Scott Bessler (LC-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604



Robert S. Guenther (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

45. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

46. 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 the payment was due at a rate established pursuant to 31 U.S.C. § 3717. 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.

#### SUPPLEMENTAL ENVIRONMENTAL PROJECT

47. Respondent must complete a Supplemental Environmental Project (SEP) designed to protect the public health and the environment by decommissioning and disposing of six PCB transformers at its Phoenix facility.

48. At its Phoenix facility, and within 90 days of the entry of this CAFO, Respondent must complete the SEP as follows: At its Phoenix facility, Respondent must remove and properly dispose of oil, contents and carcasses of six PCB transformers currently in use, stored for reuse or stored for disposal. This removal and disposal must occur in compliance with all federal, state and local requirements.

49. Respondent must spend at least \$77,268 to remove and dispose of the six PCB transformers described above.

50. By executing this CAFO, Respondent certifies as follows:

I certify that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Sterling in good faith estimates that the cost of the SEP is \$77,268.

I certify that Sterling Lumber Company is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Sterling Lumber Company has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action. I also certify that the SEP is not a project that Sterling Lumber Company was planning or intending to construct, perform or implement other than in settlement of the violations in this CAFO. I further certify that Sterling Lumber Company will not receive reimbursement for any portion of the SEP from any other person or entity.

I certify that Sterling Lumber Company is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

51. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

52. Respondent must provide the documentation of any research, data or other documentation underlying the SEP to EPA within seven days of EPA's request for the information.

53. Respondent must submit a SEP completion report to EPA within 30 days after completion of SEP activities described in paragraphs 47 and 48. This report must contain the following information:

- a. Detailed description of the SEP as completed, including copies of hazardous waste manifests and certificates of disposal;
- b. Description of any problems that occurred during implementation of the SEP and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP, including transportation, labor and administrative costs. These may be documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, by clearly stating the amount of PCBs removed in pounds or gallons).

54. Respondent must submit all notices and reports required by this CAFO by first class mail to Mr. Bessler of the Pesticides and Toxics Compliance Section at the address provided in paragraph 43, above.

55. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

56. Following receipt of the SEP completion report described in paragraph 53 above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 58, below.

57. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 58, below.

58. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 48 above, Respondent must pay a penalty of \$90,688.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 49, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 49, Respondent must pay a penalty of \$22,672.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond

59. EPA's determinations of whether Respondent satisfactorily completed the SEP, including the SEP completion report, and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

60. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 42 and 43, above, and will pay interest, handling charges and penalties on any overdue amounts.

61. Any public statement that Respondent makes referring to the SEP must include the following language, "Sterling Lumber Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Sterling Lumber Company for violations of PCB regulations under the federal Toxic Substances Control Act."

62. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### GENERAL PROVISIONS

63. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant), and Christian.Sterling@SterlingSolutions.com (for Respondent).

The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

64. Respondent certifies that it is complying with the PCB Rule, 40 C.F.R. part 761.

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

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

67. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and EPA's Polychlorinated Biphenyls (PCBs) Penalty Policy (April 9, 1990).

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

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

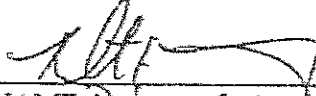
70. Each party agrees to bear its own costs and attorneys fees in this action.

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

Sterling Lumber Company, LLC, Respondent

9/21/2018

Date



NAME Robert C. Larky  
TITLE Chief Financial Officer

United States Environmental Protection Agency, Complainant

9-27-18  
Date

Tinka G. Hyde  
Tinka G. Hyde, Director  
Land and Chemicals Division



In the Matter of:  
Sterling Lumber Company, LLC  
Docket No. TSCA-05-2018-0015

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.

9/28/18  
Date

*Ann L. Coyle*, acting for...  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Sterling Lumber Co., LLC.  
Docket Number: **TSCA-05-2018-0015**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on 9/28/2018, in the following manner to the following addressees:

Copy by E-mail to Respondent: Mr. Christian Sterling  
Vice President of IT and Compliance  
Sterling Lumber Co., LLC.  
501 East 151st Street  
Phoenix, Illinois 60426  
  
christian.sterling@sterlingsolutions.com

Copy by E-mail to  
Attorney for Complainant: Robert Guenther  
guenther.robert@epa.gov

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: September 28, 2018

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5