



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 08 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Raymond A. Barnes
General Manager
Benton County Electric System
115 S Church Avenue
Camden, Tennessee 38320-1706

SUBJ: Consent Agreement and Final Order
Toxic Substances Control Act
Docket No. TSCA-04-2013-2907(b)

Dear Mr. Barnes:

Enclosed is a copy of the executed Consent Agreement and Final Order (CAFO) addressing the violations alleged in the Notice of Violation dated December 27, 2012. As indicated in the CAFO, the penalty is payment is due thirty (30) days from the date the CAFO was executed. If you have any questions, please contact Javier García, of my staff, at (404) 562-8616, or by email at Garcia.javier@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth, Chief
South Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosure

cc: Pamela Franklin, TDEC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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HEARING CLERK

In the Matter of:)
)
Benton County Electric System)
115 S Church Avenue)
Camden, Tennessee 38320-1706)
)
)
Respondent)
_____)

Docket No. TSCA-04-2013-2907(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 Benton County Electric System.
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 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 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 (CAFO) 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:

Javier E. García
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-8616

III. Allegations

6. Respondent is a power distributor and is 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 June 9, 2011, an inspection of Respondent's facility located at 115 S Church Avenue, Camden, Tennessee, was conducted by representatives of the Tennessee Department of Environmental Control, on behalf of the EPA. The inspection was conducted pursuant to Section 11 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610. At the time of inspection, the facility was in operation.
8. The purpose of the inspection was to determine Respondent's compliance with TSCA and the PCB regulations found at 40 C.F.R. Part 761.
9. 40 C.F.R. § 761.65(a)(1) requires PCB waste to be disposed of within one year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins.
10. According to Respondent's annual document log (ADL) for 2007, Respondent removed two PCB-contaminated transformers from service, for disposal, in January 2007. On January 22, 2007, Respondent removed from service transformer S/N 66AC5813 and on January 26, 2007, transformer S/N 1536292. The transformers were reported as containing PCBs at a concentration of 59 parts per million (ppm) and 117 ppm, respectively. These two transformers were shipped off-site to a disposal facility on December 20, 2007, but not finally disposed until March 12, 2008, which is more than one year after the transformers had been removed from service for disposal. Therefore, the EPA alleges the Respondent violated 40 C.F.R. § 761.65(a)(1).
11. Pursuant to the requirements set forth in 40 C.F.R. § 761.180(a)(2)(i) the ADL is required to include, among other things, the address of the facility covered by the ADL. Respondent's PCB storage building is at 925 Highway 70 East, Camden, Tennessee. However, the address entered in Parts 1 and 2 of the ADL was 115 South Church Street, Camden, Tennessee. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.180(a)(2)(i).

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 violations, the EPA has determined that an appropriate civil penalty to settle this action is in the amount of SIX HUNDRED FIFTY DOLLARS (\$650).
15. 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.
16. Respondent certifies that, as of the date of its execution of this CAFO and to the best of its knowledge, 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 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.
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 SIX HUNDRED FIFTY DOLLARS (\$650) 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.

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

Javier García
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

21. 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.

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

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VI. Effective Date

26. 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: Benton County Electric System
Docket No.: TSCA-04-2013-2907(b)

By: Raymond Barnes (Signature) Date: 3-6-2013

Name: Raymond Barnes (Typed or Printed)

Title: General Manager (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Alan Farmer Date: 3/7/13
G. Alan Farmer
Director
RCRA Division
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 8th day of March, 2013.

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 Benton County Electric System, Docket Number: TSCA-04-2013-2907(b), to the addressees listed below.

via Certified Mail, Return Receipt Requested

Mr. Raymond A. Barnes
General Manager
Benton County Electric System
115 S Church Avenue
Camden, Tennessee 38320-1706

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

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

Date: 3-8-13



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