

RECEIVED

12 FEB 27 PM 3:45

HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)	
In the Matter of:)	DOCKET NO. TSCA-10-2012-0065
)	
SANDERS WOOD PRODUCTS, INC.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent)	
_____)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

EPA DOCKET NUMBER TSCA-10-2012-0065
Consent Agreement and Final Order
In the Matter of Sanders Wood Products Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

1.3. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Sanders Wood Products Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 15 of TSCA is proposed to be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA, together with the specific provisions of TSCA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

EPA alleges the following:

3.1. TSCA Section 15 prohibits any person from failing or refusing to comply with any rule promulgated under TSCA regulating any manner or method of disposal of substances subject to TSCA regulation. 15 U.S.C. § 2614. *See also* TSCA Sec. 6, 15 U.S.C. § 2605 (EPA authority to promulgate regulations under TSCA). Under the authority of TSCA, EPA has promulgated regulations regarding the manner and method of storage and disposal of polychlorinated biphenyls (“PCBs”) at 40 C.F.R. Part 761.

3.2. Respondent owns and operates a facility at 28890 S. Highway 213, Liberal, Oregon. On February 24, 2009, the facility had PCB Articles, including four PCB Transformers, as defined in 40 C.F.R. § 761.3, at two locations, the Stud Mill and the Precision Mill. PCB Transformers GE 6624378 and GE 6624380 were in a fenced area at the Stud Mill location. PCB Transformers GE 7082398 and TAV4133-01 were in a fenced area at the Precision Mill location. Respondent used or stored one or more PCB Transformers each year from 1998 to 2009.

3.3. Respondent is a “person” as defined in 40 C.F.R. § 761.3.

3.4. Respondent is a “generator of PCB waste” as defined in 40 C.F.R. § 761.3.

3.5. 40 C.F.R. § 761.40(j) requires areas in which PCB Transformers are located to be marked with an M_L label as described in 40 C.F.R. § 761.45. On February 24, 2009, the fenced areas containing PCB Transformers at the Stud Mill and Precision Mill locations were not marked with the proper M_L labels. Respondent’s failure to mark the two fenced areas where PCB Transformers are located with M_L labels as described in 40 C.F.R. § 761.45 is a violation of 40 C.F.R. § 761.40(j).

3.6. 40 C.F.R. § 761.40(c)(1) requires PCB Transformers to be marked with an M_L label as described in 40 C.F.R. § 761.45. On February 24, 2009, three PCB Transformers (Serial Numbers GE 6624378, GE 6624380, and TAV4133-01) were not properly labeled. Respondent’s failure to properly mark each PCB Transformer with an M_L label as described in 40 C.F.R. § 761.45 is a violation of 40 C.F.R. § 761.40(c)(1).

3.7. 40 C.F.R. § 761.30(a)(1)(viii) prohibits combustible materials from being stored within a PCB Transformer enclosure. On February 24, 2009, combustible materials (including vegetation and sawdust) were present in the PCB Transformer enclosures at both the Stud Mill and

Precision Mill locations. Respondent's storage of combustible materials in a PCB Transformer enclosure is a violation of 40 C.F.R. § 761.30(a)(1)(viii).

3.8. 40 C.F.R. § 761.180(a) requires each owner or operator of a facility that uses or stores one or more PCB Transformers to maintain an Annual Document Log of the disposition of PCB Transformers. These Annual Document Logs must be available for EPA inspection. On February 24, 2009, Respondent did not make Annual Document Logs for 2006 and 2007 available to the EPA inspector. Respondent's failure to make Annual Document Logs for 2006 and 2007 available to the EPA inspector is a violation of 40 C.F.R. § 761.180(a).

3.9. 40 C.F.R. § 761.30(a)(1)(x) requires the repair, replacement, or containment of any PCB Transformer with a leak. On February 24, 2009, Respondent had three leaking PCB Transformers (Serial Numbers GE 6624378, GE 6624380, and TAV4133-01) that had not been repaired, replaced, or contained. Respondent's failure to repair, replace, or contain the three leaking PCB Transformers is a violation of 40 C.F.R. § 761.30(a)(1)(x).

3.10. 40 C.F.R. § 761.50(a)(4) provides that an uncontrolled discharge from a PCB Transformer constitutes a spill. 40 C.F.R. § 761.60 requires proper disposal of the discharged PCBs at a PCB disposal facility. Respondent's three leaking PCB Transformers each constitutes a spill under 40 C.F.R. § 761.50(a)(4) and each is a violation of 40 C.F.R. § 761.60.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent consents to the assessment and payment of a civil penalty in the amount of \$108,400. This penalty amount is based on an application of the factors set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO shall be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondent shall note on the check the title and docket number of this action.

4.6. Respondent shall serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Mr. Tristen Gardner
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall

become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under Section 16 of the TSCA, 15 U.S.C. § 2615, together with interest, handling charges, and additional non-payment penalties described below.

4.7.1 Interest. Any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2 Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.7.3 Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay a nonpayment penalty in an amount equal to six percent (6%) per annum on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violations alleged in Section III and is currently in compliance with all applicable TSCA requirements at each of the facilities under its control.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

1/26/2012

FOR RESPONDENT:



Signature

Print Name: MICHAEL S. KARL

Title: General Manager - MOLAKA

DATED:

2/17/2012

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

EPA DOCKET NUMBER TSCA-10-2012-0065
Consent Agreement and Final Order
In the Matter of Sanders Wood Products Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the TSCA and regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 27th day of February, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: SANDERS WOOD PRODUCTS, INC., DOCKET NO.: TSCA-10-2012-0065** was filed with the Regional Hearing Clerk and that true and correct copies of the document were delivered to the following persons, in the manner specified, on the date below:

On Feb 27, 2012, a true and correct copy was delivered to:

Joan C. Shirley, Esquire
U.S. Environmental Protection Agency,
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

On Feb 27, 2012, a true and correct copy was placed in the United States mail, certified/return receipt requested to:

James E. Benedict, Esquire
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 SW Fifth Avenue, Suite 2000
Portland, Oregon 97204

Dated: Feb 27, 2012 Carol Kennedy

for
Carol Kennedy
Regional Hearing Clerk
U.S. EPA Region 10