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U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. TSCA-09-2016-00 <u>19</u>
)	
Imperial Irrigation District,)	CONSENT AGREEMENT
)	AND FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
Respondent.)	
)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Imperial Irrigation District ("IID" or "Respondent") agree to settle this case initiated under the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2601 *et seq.*, and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought against Respondent pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22 for violation of Section 15 of TSCA, 15 U.S.C. § 2614, by failing to comply with implementing regulations governing polychlorinated biphenyls ("PCBs") at 40 C.F.R. Part 761.
2. Complainant is the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division.
3. Respondent is a California public agency, organized under the California Irrigation District Act, whose principal offices are located at 333 E. Barioni Boulevard in Imperial, California.

B. STATUTORY AND REGULATORY BASIS

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA promulgated regulations at 40 C.F.R. Part 761 that govern the manufacturing, processing, distribution in commerce, marking, storage and disposal of PCBs.
5. "PCB" and "PCBs" mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substances. 40 C.F.R. § 761.3.
6. "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. 40 C.F.R. § 761.3.

7. "PCB-Contaminated Electrical Equipment" means any electrical equipment including, but not limited to, transformers . . . capacitors, circuit breakers, reclosers, voltage regulators, switches . . . electromagnets, and cable that contains PCBs at concentrations of ≥ 50 parts per million ("ppm") and < 500 ppm in the contaminating fluid.
8. "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. § 761.3.
9. "Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items. 40 C.F.R. § 761.3.
10. Any person storing or disposing of PCB waste must do so in accordance with Subpart D of 40 C.F.R. Part 761. 40 C.F.R. § 761.50(a).
11. Spills and other uncontrolled discharges of PCBs at concentrations of ≥ 50 ppm constitute the disposal of PCBs. 40 C.F.R. § 761.50(a)(4).
12. Section 15 of TSCA, 15 U.S.C. § 2614, provides that "[i]t shall be unlawful for any person to (1) fail or refuse to comply with . . . (B) any requirement prescribed by section 2604 or 2605 [Section 6 of TSCA] of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title. . . ."

C. ALLEGED VIOLATIONS

13. Respondent is a "person" as that term is defined by 40 C.F.R. § 761.3.
14. From or about April 2015 to about November 2015, Apex Companies, LLC ("Apex") performed a comprehensive environmental audit of nine former electrical substations owned and/or operated by Respondent on behalf of Respondent pursuant to Section I.G of

the Consent Agreement and Final Order in *In the Matter of Imperial Irrigation District*, Docket No. TSCA-09-2015-02 (February 12, 2015).

15. From about 1943 to about 1990, Respondent owned and operated an electrical substation located at the northeast corner of California Highway 111 and King Street in Indio, California (the "Indio Facility").
16. The Indio Facility included "PCB-contaminated electrical equipment," as that term is defined by 40 C.F.R. § 761.3, in the form of electrical transformer(s), voltage regulator(s), and circuit breaker(s), each mounted on concrete slabs-on-grade.
17. In or about April 2015, Apex collected numerous soil samples at the Indio Facility.
18. On or about April 24, 2015, Apex informed EPA that one or more soil samples collected from the Indio Facility on April 15, 2015 had PCB concentrations of ≥ 50 ppm.
19. The presence of PCBs at concentrations of ≥ 50 ppm at the Indio Facility constitutes "disposal" of PCBs, as that term is defined at 40 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).
20. The disposal of PCBs at the Indio Facility was not in accordance with Subpart D of 40 C.F.R. Part 761.
21. From or about September 17, 2015 to September 22, 2015, Respondent began and completed a clean-up of the PCBs found at the Indio Facility.
22. Respondent's disposal of PCBs at concentrations of ≥ 50 ppm at the Indio Facility from on or about April 24, 2015 to on or about September 22, 2015 constitutes a violation of 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 152 days.
23. From about 1948 to about 1989, Respondent owned and operated an electrical substation located at the northeast corner of Ninth Street and Vine Avenue in Coachella; California (the "Coachella Facility").

24. The Coachella Facility included "PCB-contaminated electrical equipment," as that term is defined by 40 C.F.R. § 761.3, in the form of electrical transformer(s), voltage regulator(s), and circuit breaker(s), each mounted on concrete slabs-on-grade.
25. In or about July 2015, Apex collected numerous soil samples at the Coachella Facility.
26. On or about July 28, 2015, Apex informed EPA that one or more soil samples collected from the Coachella Facility on July 16, 2015 had PCB concentrations of ≥ 50 ppm.
27. The presence of PCBs at concentrations of ≥ 50 ppm at the Coachella Facility constitutes "disposal" of PCBs, as that term is defined at 40 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).
28. The disposal of PCBs at the Coachella Facility was not in accordance with Subpart D of 40 C.F.R. Part 761.
29. From or about February 24, 2016 to March 10, 2016, Respondent began and completed a clean-up of the PCBs found at the Coachella Facility.
30. Respondent's disposal of PCBs at concentrations of ≥ 50 ppm at the Coachella Facility from on or about July 28, 2015 to on or about March 10, 2016 constitutes a violation of 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 227 days.

D. RESPONDENT'S ADMISSIONS

31. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) admits the specific factual allegations contained in this CAFO; (iii) consents to any and all conditions specified in this CAFO; (iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. EPA AUDIT POLICY

32. For purpose of this CAFO, Respondent seeks application of EPA's policy on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 65

Fed. Reg. 19618 (April 11, 2000) (the "Audit Policy"), to the violations identified in Section I.C of this CAFO.

33. The EPA Polychlorinated Biphenyls Penalty Policy dated April 9, 1990 provides for a penalty of two million six hundred and eighty-seven thousand and one hundred dollars (\$2,687,100) for the violations identified in Section I.C of this CAFO.
34. The Audit Policy has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment and reducing transaction costs associated with violations of the laws EPA is charged with administering. If certain specified criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit Policy. These criteria are: (1) discovery of the violation(s) through an environmental audit or due diligence; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.
35. Complainant has determined that Respondent has satisfied all of the criteria under the Audit Policy and thus qualifies for the elimination of the gravity-based penalties in this matter. Complainant also has determined that Respondent has not received an economic benefit from the violations in this matter. Accordingly, the civil penalty assessed in this matter is zero (\$0) dollars.
36. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is based upon documentation that Respondent has provided to establish that it satisfies these criteria. Complainant and Respondent agree that, should any material fact upon which Complainant relied in making its finding subsequently prove to be other than as represented by Respondent, this CAFO may be voided in whole or in part.
37. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO.

Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.

38. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.
39. In executing this CAFO, Respondent certifies that it is now in compliance with all applicable requirements of section 6(e) of TSCA, 15 U.S.C. § 2605(e), and its implementing regulations set forth at 40 C.F.R. Part 761.

F. ATTORNEYS' FEES AND COSTS

40. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

G. EFFECTIVE DATE


41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

H. BINDING EFFECT

42. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
43. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT IMPERIAL IRRIGATION DISTRICT:

8-15-16
DATE


By: Norma Sierra Galindo
Title: Board President
Address: P.O. box 937
Imperial, CA 92251

FOR COMPLAINANT EPA REGION IX:

8/30/16
DATE



Douglas McDaniel

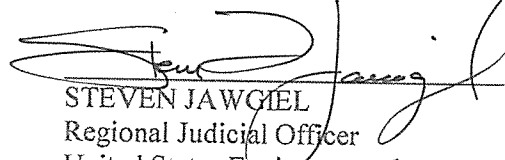
Chief
Waste and Chemical Section
Air, Waste and Toxics Branch
Enforcement Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA Region IX and Imperial Irrigation District having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2016-0019) be entered.

09/08/16
DATE


STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Imperial Irrigation District (**Docket No: TSCA-09-2016-0019**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

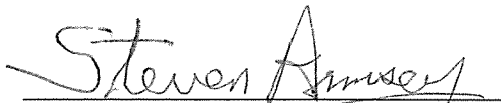
A copy was mailed via CERTIFIED MAIL to:

Kevin Kelley
General Manager
Imperial Irrigation District
P.O. Box 937
Imperial, CA 92251

CERTIFIED MAIL NUMBER: 77000 0320 0002 0254 2321

And an additional copy was hand-delivered to the following U.S. EPA case attorney:

David Kim
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX

Sep. 9, 2016
Date