



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 05 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charlotte Knight Griffin
Legal Services
Memphis Light, Gas and Water Division
220 South Main Street
Memphis, TN 38103

SUBJ: Docket No. TSCA-04-2009-2600(b)
MLGW

Dear Ms. Griffin:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties pursuant to section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Pursuant to section 37 of the CAFO, the assessed penalty of \$1,220,576.00 is due within 30 days after the effective date of the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO.

EPA looks forward to receiving MLGW's periodic reports on its progress in conducting the Supplemental Environmental Project (SEP) required by the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Raj Aiyar at (404) 562-8993.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosure(s)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2009 NOV -5 PM 2:39

RECEIVED
EPA REGION IV

HEARING CLERK

In the Matter of:)
)
Memphis Light, Gas & Water Division)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2600

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 Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Memphis Light, Gas & Water Division.
2. 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

3. The Administrator of EPA promulgated rules pertaining to Polychlorinated Biphenyls (PCBs) in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605. Failure to comply with any such rule 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 after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. This CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, and subsequent purchasers.
6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Raj Aiyar
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-8993

III. EPA's Findings of Fact and Allegations of Violations

7. Respondent is a large municipal utility that provides electricity, natural gas and water service to more than 420,000 customers in Memphis, TN and Shelby County, TN.

8. Respondent is a user of PCB Items operating in the State of Tennessee and is a “person” as defined in 40 C.F.R. § 761.3. PCB Items, as defined in 40 C.F.R. § 761.3, includes, but is not limited to, any PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
9. On October 26 and November 8, 2005, State of Tennessee Department of Environment and Conservation (TDEC) inspectors, as authorized representatives of EPA, conducted inspections at Respondent’s Central Shops located at 703 Beale Street in Memphis, Tennessee to determine compliance with the PCB regulations promulgated under Section 6(e) of TSCA. On March 6, 2006, TDEC inspectors conducted additional TSCA PCB compliance inspections at Respondent’s facilities identified as: Substation 1, located at 1642 East Person Avenue in Memphis, Tennessee; Substation 3, located at 542 South Third Street in Memphis, Tennessee; and Substation 4, located at 67 Jackson Avenue in Memphis, Tennessee. Based on the findings of TDEC’s inspections, EPA has determined that Respondent violated the TSCA PCB regulations at the Central Shops and Substations 1, 3, and 4 as described more fully below.
10. PCB Disposal Violations - Central Shops
 - a. The Central Shops is a maintenance and repair facility where electrical equipment is serviced, repaired, and/or taken out of service for disposal. Operations at the Central Shops include the draining of oil from electrical equipment including “PCB Transformers” (containing ≥ 500 ppm PCBs), “PCB-Contaminated Transformers” (containing ≥ 50 ppm but < 500 ppm PCBs), and “Non-PCB Transformers” (containing < 50 ppm PCBs).

- b. Until 2006, Respondent's routine practice and procedure was to mix together in one 500-gallon common tank inside the Central Shops the oil drained from transformers containing ≥ 50 ppm PCBs with oil drained from transformers containing < 50 ppm PCBs, without taking into account the PCB concentration of the oil from each piece of equipment. The blended, commingled, and diluted oil from the 500-gallon common tank was further processed and pumped outside the Central Shops into two 6,000-gallon storage tanks and eventually sold to facilities that burned the oil for energy recovery, but were not licensed or approved to incinerate or otherwise dispose of PCB oils.
- c. Pursuant to 40 C.F.R. § 761.60(a), PCB liquids that contain ≥ 50 ppm PCBs but < 500 ppm PCBs must be disposed in a high efficiency boiler or a TSCA incinerator and PCB liquids containing ≥ 500 ppm PCBs must be incinerated in a TSCA incinerator pursuant to 40 C.F.R §§ 761.70 and 71.
- d. Pursuant to 40 C.F.R. § 761.20(e)(2)(ii), if any PCBs at a concentration of ≥ 50 ppm have been added to a common container, then the total container contents must be considered as having a PCB concentration of ≥ 50 ppm for purposes of complying with the disposal requirements found at 40 C.F.R. § 761.60.
- e. By mixing and diluting oil containing PCBs at concentrations ≥ 50 ppm into a tank with oil containing PCBs at concentrations < 50 ppm and by selling the oil for energy recovery, Respondent violated the following PCB disposal regulations:

- f. 40 C.F.R. § 761.1(b)(5). No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided. Respondent violated this provision by diluting thousands of gallons of oil containing ≥ 50 ppm PCBs into the common tank with oil containing < 50 ppm PCBs, and failing to properly dispose of the oil.
- g. 40 C.F.R. § 761.50(b)(1). Any person removing PCB liquids from use must dispose of them in accordance with 40 C.F.R. § 761.60(a), which requires that PCB liquids at concentrations ≥ 50 ppm must be disposed in an incinerator which complies with 40 C.F.R. § 761.70, except that mineral oil dielectric fluids with PCB concentrations ≥ 50 ppm and < 500 ppm may be disposed in a high efficiency boiler pursuant to 40 C.F.R. § 761.71(a). Respondent violated these requirements by selling hundreds of thousands of gallons of diluted PCB oil deemed by law to contain ≥ 50 ppm PCBs to a facility that burned the oil for energy recovery, rather than sending the oil to a TSCA approved incinerator or a high efficiency boiler.
- h. 40 C.F.R. § 761.20(e)(2)(ii). Under 40 C.F.R. § 761.20(e)(2)(ii), if any PCBs at a concentration ≥ 50 ppm have been added to a container, then the total container contents must be considered as having a PCB concentration ≥ 50 ppm for purposes of complying with the disposal requirements of 40 C.F.R. §§ 761.60, 761.70 and 761.71. Respondent violated these provisions for many years by diluting and mixing together in the common tank many thousands of gallons of oil with PCB concentrations ≥ 50 ppm with oil containing < 50 ppm PCBs, and by failing to treat the entire contents as containing PCBs ≥ 50 ppm and disposing of it accordingly.

- i. 40 C.F.R. § 761.60(g)(1)(i) and 40 C.F.R. § 761.60(g)(1)(ii). Under 40 C.F.R. § 761.60(g)(1)(i) dielectric fluid removed from mineral oil electrical equipment may be collected in a common container, however, the oil may not be diluted. Mineral oil that is known or assumed to contain ≥ 50 ppm PCBs may not be mixed with mineral oil that is known or assumed to contain < 50 ppm PCBs to reduce the concentration of PCBs in the common container. If such mixing and dilution occurs, the entire contents of the common container must be treated as if it contains ≥ 50 ppm PCBs and disposed in accordance with 40 C.F.R §§ 761.60, 761.70 and 761.71. Under 40 C.F.R. § 761.60(g)(1)(ii), if any PCBs at a concentration ≥ 500 ppm have been added to a common container, then the total container contents must be considered as having a PCB concentration of ≥ 500 ppm and must be disposed by incineration in a PCB incinerator pursuant to 40 C.F.R. § 761.70. Respondent violated these provisions for many years by diluting and mixing together in the common tank many thousands of gallons of oil with PCB concentrations ≥ 50 ppm and ≥ 500 ppm with oil containing < 50 ppm PCBs, and by failing to treat the entire contents as containing PCBs ≥ 50 ppm and ≥ 500 ppm and disposing of it accordingly.

11. PCB Storage, Marking, Recordkeeping, and Marketing Violations - Central Shops

- a. Section 6(e)(3)(A) and (B) of TSCA and 40 C.F.R. § 761.20(c). Sections 6(e)(3)(A) and (B) of TSCA, 15 U.S.C. §§ 2605(e)(3)(A) and (B), and 40 C.F.R. § 761.20(c) prohibit persons from operating as used oil marketers and processing and distributing PCB oils without an exemption. Respondent violated these provisions by selling PCB oils generated at the Central Shops without an exemption to a facility that burned oil for energy recovery.

- b. 40 C.F.R. § 761.65(b)(1)(ii). Owners and operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with certain storage unit requirements including having an adequate floor that has continuous curbing with a minimum six inch high curb. Respondent violated this requirement by storing the 500-gallon common tank containing PCB liquid located at the Central Shops in an area without a continuous curbing with a minimum six inch high curb.
- c. 40 C.F.R. § 761.65(b)(1)(iii). Owners and operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with certain storage unit requirements including having no openings that would permit liquids to flow from the curbed area. Respondent violated this requirement by storing the 500-gallon common tank containing PCB liquid located at the Central Shops in an area with an open floor drain.
- d. 40 C.F.R. § 761.65(c)(5). All PCB Items in storage for disposal shall be checked for leaks at least once every 30 days. Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. § 761.180(a) and (b). Respondent violated this requirement by failing to maintain storage records at the Central Shops.
- e. 40 C.F.R. § 761.65(c)(8). Storage containers for liquid PCBs shall have a record that includes for each batch of PCBs the quantity of the batch and the date the batch was added to the container. The record shall also include the date, quantity, and disposition of any batch of PCBs removed from the container.

Respondent violated this requirement by failing to maintain records concerning batches of PCBs added or removed from the 500-gallon common tank and the two 6000- gallon storage tanks located at the Central Shops.

- f. 40 C.F.R. § 761.40(a)(10). Each storage area used to store PCBs and PCB Items for disposal shall be marked as illustrated in Figure 1 in 40 C.F.R. 761.45(a)

Respondent violated this requirement by failing to mark the area at the Central Shops where PCBs and PCB Transformers were stored for disposal with the M_L mark.

- g. 40 C.F.R. § 761.40(a)(1). Each PCB Container shall be marked as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) . Respondent violated this requirement by failing to mark the 500-gallon common tank and the two 6000-gallon storage tanks located at the Central Shops with the M_L mark.

12. PCB Storage, Marking, Disposal and Recordkeeping Violations - Substations 1, 3, and 4

- a. 40 C.F.R. § 761.65(b). An owner or operator of a PCB Article may store it for reuse in an area which is not designed, constructed and operated in compliance with 40 C.F.R. § 761.65(b), for no more than five years after the date the Article was originally removed from use. Respondent violated this requirement at Substation 1 by storing approximately 528 PCB Capacitors for reuse in an area not in compliance with 40 C.F.R. § 761.65(b) for over five years. Respondent violated this requirement at Substation 4 by storing approximately 257 PCB Capacitors for reuse in an area not in compliance with 40 C.F.R. § 761.65(b) for over five years.

- b. 40 C.F.R. § 761.35(a)(2). The owner or operator of a PCB Article may store it for reuse in an area which is not designed, constructed and operated in compliance with 40 C.F.R. § 761.65(b), for no more than five years, if the owner or operator follows all use and marking requirements and maintains records. Respondent violated this requirement by failing to maintain records concerning approximately 528 PCB Capacitors stored for reuse at Substation 1, and by failing to maintain records concerning approximately 257 PCB Capacitors stored for reuse at Substation 4.
- c. 40 C.F.R. § 761.35(b). The owner or operator of a PCB Article may store it for reuse in an area that does not comply with 40 C.F.R. § 761.65(b) for a period longer than five years, provided that the owner or operator has received written approval from the EPA Regional Administrator for the Region in which the PCB Article is stored. Respondent violated this requirement by storing approximately 528 PCB Capacitors at Substation 1, and 257 PCB Capacitors at Substation 4 for reuse for more than five years without requesting and receiving written approval from the EPA Regional Administrator.
- d. 40 C.F.R. § 761.60(a). PCB liquids at concentrations ≥ 50 ppm must be disposed of in an incinerator which complies with 40 C.F.R. § 761.70. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of ≥ 50 ppm constitute the disposal of PCBs. The Respondent's Westinghouse Oil Circuit Breaker, serial number 61816818, located in the circuit breaker cabinet number 1269 at Substation 1 was leaking fluid which was analyzed and found to contain ≥ 500 ppm PCBs. Respondent violated 40 C.F.R. § 761.60(a) by improperly disposing of PCBs through an uncontrolled discharge.

- e. 40 C.F.R. 761.40(c)(2). All PCB large high voltage capacitors must be individually marked as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) or if one or more PCB large high voltage capacitors are installed in a protected location such as on a power pole, or structure, or behind a fence; the pole, structure or fence shall be marked with the mark M_L. Respondent violated this requirement by (1) failing to properly mark six cabinets housing approximately 792 large high voltage PCB Capacitors at Substation 1 with the PCB M_L mark,, (2) failing to properly mark four cabinets housing 864 large high voltage PCB Capacitors at Substation 3 with a legible PCB M_L mark, and (3) failing to properly mark six cabinets housing approximately 768 large high voltage PCB Capacitors at Substation 4 with a legible PCB M_L mark.

IV. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies EPA's Findings of Fact and Allegations of Violation.
14. 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.
15. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the PCB regulations under TSCA and 40 C.F.R. Part 761.

17. This CAFO constitutes a settlement by 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, 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 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. Terms of Settlement

19. Payment of Penalty. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), and in consideration of the nature of the alleged violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **ONE MILLION TWO HUNDRED TWENTY THOUSAND FIVE HUNDRED SEVENTY SIX DOLLARS (\$1, 220,576.00)**.
20. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty as cited in the foregoing paragraph and to the performance of the SEP set forth herein.

21. Performance of SEP. Respondent has agreed to conduct as a SEP over the next three years a Voluntary Accelerated PCB Removal Program that will significantly reduce the number of PCB transformers, PCB-contaminated transformers, PCB Capacitors, and associated PCB oils in its possession that are in use, stored for reuse, or stored for disposal. The three year SEP is part of Respondent's longer term 10-year program to remove from service all PCB equipment that contains regulated amounts of PCBs, and to help achieve an overall reduction of PCBs in use which will decrease the risk for potential adverse environmental and health impacts associated with PCB exposure.
22. Background on Transformers and Capacitors Currently in Service. As of the effective date of this CAFO, Respondent has approximately 110,000 distribution transformers in service, of which approximately 40,841 were manufactured prior to July 2, 1979, including 30,774 overhead (polemount) transformers, 2,245 submersible (underground) transformers, and 7,822 padmount transformers (of which 1,600 are live-front 3-phase padmount transformers). All of these distribution transformers contain mineral oil as the dielectric fluid.
23. Pursuant to 40 CFR 761.2(a)(2), mineral oil-filled transformers which were manufactured prior to July 2, 1979, whose PCB concentration is unknown, and mineral oil-filled transformers whose date of manufacture is unknown, must be assumed to be PCB-contaminated containing ≥ 50 ppm PCBs, but < 500 ppm PCBs. All pole-top and pad-mounted distribution transformers manufactured before July 2, 1979, must be assumed to be mineral-oil filled. Although PCBs were reportedly not intentionally added to pre-July 2, 1979 mineral oil distribution transformers, these transformers often became cross-contaminated with PCBs during the manufacturing process and/or during in-house maintenance activities.

24. As of the effective date of this CAFO, Respondent has not sampled or tested any of the distribution transformers currently in service for PCBs. However, Respondent does have historic PCB analytical data for approximately 7,785 pre-July 2, 1979 transformers that were removed from service.
25. The historic data showed that 5.83% of the 7,785 pre-July 2, 1979 transformers (454) contained regulated levels of PCBs; 414 transformers were PCB-contaminated (contained ≥ 50 ppm but < 500 ppm PCBs) and 40 transformers were PCB transformers (contained ≥ 500 ppm PCBs).
26. Based upon extrapolation of the historic data and the number of “like” distribution transformers currently in service (e.g. same manufacturer, type of transformer, KVA rating, size, date of manufacture), Respondent estimates that approximately 2,242 distribution transformers contain regulated amounts of PCBs (≥ 50 ppm).
27. As of the effective date of this CAFO, Respondent has 5,559 PCB capacitors in service located at Substations 1, 3, 5, 6, 11, 13, 15, 26, 33, 34, and 38.
28. Description of SEP Activities. Respondent shall conduct the following SEP activities (in accordance with the schedule set forth herein and in Attachment A), which the parties agree is intended to secure significant environmental and public health protection.
 - a. Removal and disposal of submersible transformers and live-front 3-phase transformers. Based on historical analytical data, Respondent estimates that 60 of the 2,245 submersible transformers, and 120 of the 1,600 live-front 3-phase padmount transformers contain regulated levels of PCBs. Respondent will remove and dispose of all 180 of these transformers and PCB oils within 3 years after the effective date of this CAFO.

During each year of the 3-year SEP, Respondent shall remove, dispose, and replace 20 submersible transformers and 40 live-front 3-phase padmount transformers and PCB oils. Prior to final disposal, the transformer oil from each transformer will be sampled to determine PCB content, and PCB oils and transformer carcasses will be properly disposed in accordance with the applicable PCB regulations. Respondent also plans to remove and dispose of the remaining 2,185 submersible transformers, and the remaining 1,480 live-front 3-phase padmount transformers within ten years after the effective date of the CAFO.

- b. Sampling of Transformers. Within two years after the effective date of this CAFO, Respondent shall have completed the sampling and analyses of all of the estimated 30,774 energized single-phase overhead transformers and 6,222 single-phase padmount transformers for PCB concentrations. Stage 1 will focus on the group of transformers that have the highest probability of containing regulated levels of PCBs based upon historic analytical data for similar transformers (General Electric, Moloney, and Westinghouse). Stage 2 will include the second group of transformers having a probability of containing regulated levels of PCBs based on historic analytical data (Wagner, Central, Kuhlman) and Stage 3 will include all remaining single-phase overhead and padmount distribution transformers in service.
- c. Removal, Replacement and Disposal of PCB Transformers During Sampling Activities. While the sampling process is ongoing, any PCB transformers found to contain PCBs ≥ 500 ppm will be removed from service within seven (7) days after the sampling results are confirmed.

Respondent may also elect to remove from service at any time any PCB-contaminated transformer containing ≥ 50 ppm PCBs but less than 500 ppm PCBs.

d. Removal, Replacement, and Disposal of Single-Phase Overhead and Padmount Transformers.

During the second and third years of the SEP, Respondent estimates that it will remove, dispose and replace each year approximately 350 single-phase overhead and padmount transformers containing ≥ 50 ppm PCBs but less than 500 ppm PCBs for a total of 700 transformers removed, disposed and replaced during the SEP. This number is estimated because sampling has not yet been conducted and it is currently unknown how many transformers will contain regulated levels of PCBs. Notwithstanding this estimate, within 3 years after the effective date of this CAFO, Respondent will have completed the removal, disposal, and replacement of 40 per cent of the total number of transformers that were identified through the sampling program as containing regulated levels of PCBs. All drained PCB liquids shall have been properly disposed in accordance to 40 C.F.R. § 761.60(a) and the transformer carcasses shall have been properly disposed in accordance with 40 C.F.R. § 761.60(a)(4).

e. Removal, Replacement, and Disposal of PCB Capacitors. Respondent shall within three (3) years of the effective date of this CAFO remove, dispose, and replace approximately 2,859 large high voltage substation PCB Capacitors located in electric Substations (1, 5, 11, 13, 15 and 26) within the City of Memphis, Shelby County as follows:

- (i) 2009: Substations 1 and 15 – 636 capacitors

- (ii.) 2010: Substations 5 and 13 – 1,400 capacitors
 - (iii.) 2011: Substations 11 and 26 – 823 capacitors
 - f. By the completion of the SEP, Respondent shall have removed at least 51% of the estimated total number of PCB Capacitors (5,559) in service.
29. Upon completion of the SEP after 3 years, it is estimated that approximately 1,216,309 pounds of PCBs will be removed from the environment through the removal and replacement of at least 2,859 PCB Capacitors, and the removal of at least 180 submersible and live front 3-Phase transformers, and approximately 700 single-phase overhead and padmount transformers. Respondent's SEP is being conducted in accordance with EPA's Final SEP Policy issued April 10, 1998.
30. The total expenditure for the SEP shall not be less than Ten Million Ninety-Four Thousand Three Hundred and Ninety Dollars (\$10,094,390). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein.
31. Respondent shall submit the following documentation to Mr. Aiyar at the address listed in paragraph 6 regarding the progress and completion of the SEP:
- a. During the first year after the effective date of this CAFO, Respondent shall submit a Periodic Report to EPA within thirty (30) days after the end of each four (4) month period, for a total of three reports. During the second and third year of the SEP, Respondent shall submit two Periodic Reports each year within thirty (30) days after the end of every six (6) month period. The Periodic Report shall contain the following information:
 - (i) A detailed description of the status of the SEP, and copies of all analytical sampling data, manifests and shipping records, Certificates of Destruction

(CDs), an inventory of all PCB Items in service as of the date of the Periodic Report along with copies of invoices and expense reports.

(ii). A timeline indicating the completion date or the expected completion date for: sampling distribution transformers; analyzing samples collected from distribution transformers for PCBs; and removing, replacing and disposing distribution transformers and PCB capacitors.

b. Respondent shall submit a final SEP Completion Report to EPA within thirty (30) days after the completion of the SEP. The SEP Completion Report shall contain the following information:

- (i). A detailed description of the SEP as implemented that includes all activities undertaken to complete the SEP as required in paragraph 28 including all information listed in paragraph 31a;
- (ii). an affidavit from an authorized company official, attesting that the SEP has been completed documenting SEP expenditure or explaining in detail any failure to complete or any deviation and/or modification to the SEP;
- (iii.) an inventory of all PCB Items in service at the end of completion of SEP and copies of invoices and expense reports.

32. Failure to submit the SEP Completion Report or any Periodic Report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 34 below unless otherwise waived by EPA.

33. Respondent agrees that EPA may inspect Respondent's facilities, including review of all records associated with the SEP project, at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

34. Stipulated Penalties. Failure to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP as described in paragraph 28 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 30 above will be considered a violation of this CAFO for which Respondent shall be liable for stipulated penalties according to the provisions set forth below.

- a. Except as provided in subparagraph (b) immediately below, if the SEP is not completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of FIVE MILLION TWO HUNDRED TWENTY-EIGHT THOUSAND FIFTEEN DOLLARS (\$5,228,015.00).
- b. If the SEP is not completed satisfactorily, but EPA determines that Respondent has made good faith and timely efforts to complete the SEP and has certified, with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- c. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall not be liable for any stipulated penalty.
- d. If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall pay a stipulated penalty of FOUR HUNDRED THIRTY SIX THOUSAND SIX HUNDRED FORTY-THREE DOLLARS (\$436,643.00).
- e. For failure to timely submit any Periodic Report required by paragraph 31(a) above, Respondent shall pay a stipulated penalty in the amount of Two Hundred

Fifty Dollars (\$250) for each day the report is late.

- f. For failure to timely submit the final SEP Completion Report required by paragraph 31(b) above, Respondent shall pay a stipulated penalty in the amount of Five Hundred Dollars (\$500) for each day the report is late.
 - g. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement and complete the SEP shall be in the sole reasonable discretion of EPA.
 - h. Payment of stipulated penalties shall be due not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 38 and 39 below.
 - i. In order to achieve the cost of the SEP described in paragraph 30 and/or the minimum spending levels described in subparagraphs (a), (b), (c) and (d) immediately above, Respondent may elect to remove and dispose of PCB equipment which is included in its longer term 10-year program but outside of the SEP. In such case, Respondent shall not be liable for any stipulated penalty.
35. Respondent certifies that, as of the date this CAFO is signed, Respondent is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
36. Any formal public statement, whether oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 6(e) of TSCA, 15 U.S.C. §

2605.”

VI. Final Order

37. Respondent is assessed a civil penalty of **ONE MILLION TWO HUNDRED TWENTY THOUSAND FIVE HUNDRED SEVENTY SIX DOLLARS (\$ 1, 220,576.00)** which shall be paid within 30 days from the effective date of this CAFO.
38. 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
PO Box 979077
St. Louis, MO 63197-9000.

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

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson (314) 418-4087

39. 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, S.W.
Atlanta, Georgia 30303-8960;

Raj Aiyar
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

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

40. Correspondence with Respondent regarding this matter shall be directed to the following persons at the following addresses:

Monica Darby
Environmental Affairs
Memphis Light, Gas and Water Division
220 South Main Street
Memphis, Tennessee 38103
(901) 528-4647

and

Charlotte Knight Griffin
Legal Services
Memphis Light, Gas and Water Division
220 South Main Street
Memphis, Tennessee 38103
(901) 528-4721

41. Pursuant to 31 U.S.C. § 3717, 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.

42. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
43. EPA and Respondent shall bear their own costs and attorney fees in this matter.
44. This CAFO shall be binding upon the Respondent, its successors and assigns.
45. The undersigned representative of the party 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.


Remainder of Page Intentionally Left Blank

VII. Effective Date

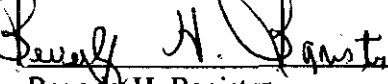
46. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

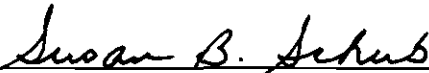
Respondent: Memphis Light, Gas & Water Division
Docket No.: TSCA-04-2009-2600

By:  (Signature) Date: 10/17/08
Name: Jerry R. Collins, Jr. (Typed or Printed)
Title: President & CEO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 10/31/08
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 5th day of November, 2008.

By: 
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, In the Matter of Memphis Light, Gas and Water Division, Docket Number: TSCA-04-2009-2600, and served a true and correct copy of same to the addressees listed below.

Charlotte Knight Griffin
Legal Services
Memphis Light, Gas and Water Division
220 South Main Street
Memphis, TN 38103

(via Certified Mail, Return Receipt Requested)

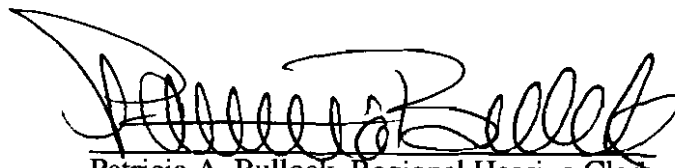
Raj Aiyar
RCRA/PCB Section
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date: 11-5-08



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth St., S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundl Wilson on 11/4/08
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9804
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Memphis Light Gas + Water Division
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,220,576.⁰⁰
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2600

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |