



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 04 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Marcus Dean
Vice President for Capital Projects and Facilities Services
Physical Plant Building
Tuskegee University
1200 West Montgomery Road
Tuskegee, Alabama 36088

Re: Tuskegee University
Consent Agreement and Final Order
Docket No. TSCA-04-2016-2901(b)

Dear Mr. Dean:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

If you have any questions or concerns, please contact Kris Lippert, of my staff, at (404) 562-8605.

Sincerely,

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

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Tuskegee University)
1200 West Montgomery Road)
Tuskegee, Alabama 36088)
)
Respondent.)
_____)

Docket No. TSCA-04-2016-2901(b)

USEPA, REGION 4
OFFICE OF REGIONAL
COUNSEL
2016 AUG -4 AM 6:57
HEARING CLERK

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 Restoration Division (RCRD), United States Environmental Protection Agency, Region 4 (EPA). Respondent is Tuskegee University.
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 delegated this authority to the Director of RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD 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, the Administrator of EPA promulgated regulations in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). 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 \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. 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 EPA in this proceeding:

Kris Lippert
RCRA/OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8605

III. Specific Allegations

6. Respondent was a user of PCB Items operating in the State of Alabama and is a “person” as defined in 40 C.F.R. § 761.3.
7. On or about June 18, 2014, an Alabama Department of Environmental Management (ADEM) representative, on behalf of the EPA, conducted an inspection Tuskegee University located at 1200 West Montgomery Road, Tuskegee, Alabama, 36088 (the facility), to determine compliance with the PCB regulations.
8. 40 C.F.R. § 761.3 defines PCB Capacitor as any capacitor that contains greater than 500 ppm PCBs.
9. 40 C.F.R. § 761.3 defines Large High Voltage Capacitor as a capacitor which contains 1.36 kilograms (3 pounds) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.) or above.
10. During the inspection, the following out of service PCB Items were being stored on-site for disposal:
 - a. one (1) PCB-Contaminated transformer (GE 37.5 KVA, serial number B717529, capacity of 20-gallons) with a PCB concentration of 303 ppm PCBs, stored at Morton Hall;
 - b. three (3) large GE PCB Large High Voltage Capacitors (serial numbers: H108941, H107047, and H108579) store in front of Russell Hall; and

c. six (6) large GE PCB Large High Voltage Capacitors (serial numbers: M098378, M098312, M098367, M098316, M098328, and M098348) stored behind the Power House.

11. 40 C.F.R. § 761.3 defines PCB Item as 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.
12. Pursuant to 40 C.F.R. § 761.65(a)(1), PCB waste must be disposed of as required by Subpart D of the PCB regulations within 1-year from the date it was determined to be PCB waste and the decision was made to dispose it. This date is the date of removal from service for disposal. During the inspection, Respondent could not provide any documentation showing when the one GE PCB-Contaminated transformer and the nine GE PCB Large High Voltage Capacitors listed in Paragraph 10 had been removed from service or first stored on-site for disposal, and could not prove that the Capacitors had been in storage for less than one year. Therefore, Respondent violated 40 C.F.R. § 761.65(a)(1).
13. Pursuant to 40 C.F.R. § 761.40(a)(3), PCB Large High Voltage Capacitors are required to be marked as illustrated in 40 C.F.R. § 761.45(a) at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked. At the time of the inspection, Respondent was storing the nine out of use GE PCB Large High Voltage Capacitors listed in Paragraph 10 for disposal that were not marked as required. Therefore, Respondent violated 40 C.F.R. § 761.40(a)(3).
14. Pursuant to 40 C.F.R. § 761.65(b), PCBs and PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. At the time of the inspection, Respondent was storing the PCB Items listed in Paragraph 10 for disposal in areas that did not meet the requirements of 40 C.F.R. § 761.65(b). Therefore, Respondent violated 40 C.F.R. § 761.65(b).
15. Pursuant to 40 C.F.R. § 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked in accordance with 40 C.F.R. § 761.45(a). At the time of the inspection, Respondent was storing the PCB Items listed in Paragraph 10 for disposal in areas that did not meet the requirements of 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3). Therefore, Respondent violated 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3).
16. Pursuant to 40 C.F.R. § 761.65(c)(5), 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). Respondent failed to inspect the equipment and maintain storage records for the PCB Items listed in

Paragraph 10. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(5) and 40 C.F.R. § 761.180(a).

17. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items must be marked with the date when they were removed from service for disposal. At the time of inspection, the PCB Items listed in Paragraph 10 were not marked with the date the PCB Items were removed from service. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(8).

IV. Consent Agreement

18. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
19. 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.
20. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
21. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
22. 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.
23. 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

24. Respondent is assessed a civil penalty of TEN THOUSAND EIGHT HUNDRED AND FORTY-FIVE DOLLARS (\$10,845), which shall be paid within 30 days from the effective date of this CAFO.
25. Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

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 delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

**Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency."**

26. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) 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;

Kris Lippert
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

and

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

27. 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.
28. 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. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
30. This CAFO shall be binding upon Respondent, its successors and assigns.
31. Each undersigned representatives 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.

VI. Effective Date

32. 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:

Docket No.: TSCA-04-2016-2901(b)


Respondent: Tuskegee University

By: Marcus Dean (Signature) Date: 7/14/2016

Name: Marcus Dean (Typed or Printed)

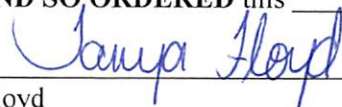
Title: VP of Capital Projects (Typed or Printed)
+ Facilities Services

Complainant: U.S. Environmental Protection Agency

By: 
G. Alan Farmer, Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

Date: 7/27/16

APPROVED AND SO ORDERED this 3rd day of August, 2016.

By: 
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for Tuskegee University, Docket Number: TSCA-04-2016-2901(b), on 8-4-16, and on 8-4-16, served the parties listed below in the manner indicated:

Bob Caplan
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

Kris Lippert
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA Internal mail)

Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

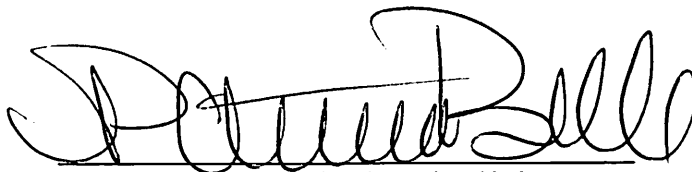
(Via EPA Internal mail)

Mr. Marcus Dean
Vice President for Capital Projects and Facilities Services
Physical Plant Building
Tuskegee University
1200 West Montgomery Road
Tuskegee, Alabama 36088

(Via Certified Mail – Return Receipt Requested)

Date:

8-4-16



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511