



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 04 2010

Karen Dunegan
Environmental Manager
Eureka Foundry
1601 Reggie White Boulevard
Chattanooga, Tennessee 37402

SUBJ: Eureka Foundry
Docket Number TSCA-04-2010-2906

Dear Ms. Dunegan:

Enclosed please find a fully executed Consent Agreement and Final Order issued pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-8976, or contact Brian Gross at (404) 562-8604, if you have any additional questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and
Compliance Branch
RCRA Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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MAY 10 2010

Karen Dunegan
Environmental Manager
Eureka Foundry
1601 Reggie White Boulevard
Chattanooga, Tennessee 37402

Re: Eureka Foundry
Consent Agreement and Final Order - Docket No. TSCA-04-2010-2906

Dear Ms. Dunegan:

Enclosed please find a copy of the revised Consent Agreement and Final Order (CAFO) in the above-referenced matter. Please review the final CAFO, then sign the document or forward it to the appropriate facility representative for signature. The **original** document should then be returned to EPA for signature by EPA's duly delegated official. Please return the signed original to Brian Gross at the address listed above within fourteen (14) days. Once all signatures are obtained, EPA will file the document with the Regional Hearing Clerk and mail a copy of the fully executed document to you. The CAFO is effective on the date it is filed with the Regional Hearing Clerk. The penalty due date is calculated from that time, as well.

If you have any questions, please feel free to contact Brian Gross, of my staff, at (404) 562-8604. Legal questions should be directed to Robert Caplan at (404) 562-9520.

Sincerely,

A handwritten signature in cursive script that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2018 JUN -14 AM 7:15
HEARING CLERK
EPA REGION 4

In the Matter of:)
)
Eureka Foundry)
1601 Reggie White Boulevard)
Chattanooga, Tennessee 37402)
)
Respondent)
_____)

Docket No. TSCA-04-2010-2906

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 Eureka Foundry.
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 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 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.
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. 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:

Brian O. Gross
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8604

III. EPA's Findings of Fact and Specific Allegations

6. Respondent is a user of Polychlorinated Biphenyl (PCB) Items operating in the State of Tennessee and is a "person" as defined in 40 C.F.R. § 761.3.
7. On January 27, 2009, an inspection was conducted by representatives of the Tennessee

Department of Environment and Conservation (TDEC) at the Respondent's facility located at 1601 Reggie White Boulevard, in Chattanooga, Tennessee, to determine compliance with regulations promulgated under Section 6(e) of TSCA pertaining to PCBs. During the inspection, TDEC observed that Respondent was storing a General Electric transformer that was disconnected and had been in storage for longer than five years. The transformer was found to contain 117.6 ppm PCBs. Other PCB items at the facility included in-use capacitors, which are located in a room below the furnace.

8. Pursuant to 40 C.F.R. § 761.65(a)(1), PCB waste shall be disposed of as required within one year from the date it was determined to be PCB waste. The General Electric transformer was not disposed of within one year.
9. Pursuant to 40 C.F.R. § 761.40, PCB capacitors shall be marked with the with the M_L marking illustrated in 40 C.F.R. § 761.45(a). The in-use capacitors and the building housing the furnace were not marked as required.

IV. Consent Agreement

10. 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.
11. 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.
12. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
13. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
14. 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.

15. 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

16. Respondent is assessed a civil penalty of **One Thousand, Two Hundred Dollars (\$1,200)**, which shall be paid in three payments. The first payment of **Four Hundred Dollars (\$400.00)** shall be paid within 30 days from the effective date of this CAFO. The second payment of **Four Hundred and Two Dollars and Sixty-Three Cents (\$402.63)** shall be made no later than September 15, 2010, and the third payment of **Four Hundred and One Dollars and Thirty-Two Cents (\$401.32)** shall be made no later than January 15, 2011.
17. 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.

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson (314) 418-4087

18. 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:

Patricia Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

Brian O. Gross
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

19. 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.
20. 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.

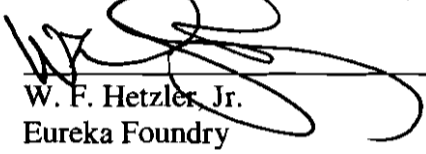
21. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
22. This CAFO shall be binding upon the Respondent, its successors and assigns.
23. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into CAFO and legally binds that party to this CAFO.

VII. Effective Date

24. 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: Eureka Foundry
Docket No.: TSCA-04-2010-2906

By: 
W. F. Hetzler, Jr.
Eureka Foundry
1601 Reggie White Boulevard
Chattanooga, Tennessee 37402

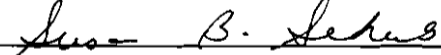
Date: 5/13/2010

Complainant: U.S. Environmental Protection Agency

By: 
G. Alan Farmer
Director
RCRA Division

Date: 6/1/10

APPROVED AND SO ORDERED this 3rd day of June, 2010.

By: 
Susan B. Schub
Regional Judicial Officer

