



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 28 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brian Taylor
General Manager
Clarksville Department of Electricity Lightband
City of Clarksville Tennessee
2021 Wilma Rudolph Blvd.
Clarksville, Tennessee 37040

SUBJ: Clarksville Department of Electricity Lightband
Consent Agreement and Final Order
Docket No. TSCA-04-2017-2901(b)

Dear Mr. Taylor:

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.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Clarksville Department of Electricity Lightband, on notice of their potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

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

Sincerely,

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

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

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

2017 SEP 28 AM 10:37

HEARING CLERK

In the Matter of:)
)
Clarksville Department of Electricity Lightband)
City of Clarksville Tennessee)
2021 Wilma Rudolph Blvd)
Clarksville, Tennessee 37040)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2017-001

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, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Clarksville Department of Electricity Lightband (CDEL).
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 the Resource Conservation and Restoration Division by EPA Region 4

Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Resource Conservation and Restoration Division 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 civil penalty in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

5. 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.
6. On or about September 1, 2016, a CDEL employee discovered a leak in a Westinghouse Pad Mount Transformer with serial number TAV4053-04; 1500 KVA, and a 541-gallon capacity,

at 1420 Paradise Hill Road, Clarksville, Tennessee (Westinghouse Transformer). The name plate for the Westinghouse Transformer did not identify the date of manufacture or the type of dielectric fluid.

7. On September 15, 2016, Respondent reported this leak to the National Response Center.
8. On September 19, 2016, in response to the reported spill of PCBs, EPA- authorized inspectors from the Tennessee Department of Health conducted an inspection at Respondent's facility to determine compliance with the PCB regulations.
9. On or about October 6, 2016, CDEL sampled the dielectric fluid in the Westinghouse Transformer and determined the PCB concentration was 4,222 ppm. Pursuant to 40 C.F.R. § 761.3, a transformer containing PCBs at concentrations ≥ 500 ppm is considered to be a PCB Transformer. Additionally, 40 C.F.R. § 761.2(a)(3) requires any person to assume that a transformer is a PCB Transformer if the date of manufacture and the type of dielectric fluid are unknown. Because the nameplate on the transformer did not indicate date of manufacture or type of dielectric fluid, and sampling showed PCB concentrations ≥ 500 ppm, the Westinghouse Transformer was a PCB Transformer.
10. At the time the Westinghouse PCB Transformer was sampled, CDEL estimated that approximately twenty gallons of PCB oil had leaked from the Transformer.
11. On or about October 6, 2016, CDEL de-energized the Westinghouse PCB Transformer.
12. On or about December 20, 2016, Respondent's contractors began clean-up of the spilled PCB oil pursuant to Respondent's revised Remediation Work Plan, dated November 11, 2016, that was approved by the EPA on December 8, 2016, in accordance with 40 C.F.R. § 761.61(c). On March 6, 2017, Respondent submitted a Final Report regarding the cleanup.

13. 40 C.F.R. § 761.30(a)(1)(vi)(A) requires that no later than December 28, 1998, all owners of PCB Transformers, including those in storage for reuse, must register their transformers with the EPA's National Program Chemicals Division, Office of Pollution Prevention and Toxics (7404), 1200 Pennsylvania Ave., NW., Washington, DC 20460. CDEL did not register the Westinghouse PCB Transformer with the EPA as required. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.30(a)(1)(vi)(A).
14. 40 C.F.R. § 761.30(a)(1)(ix) requires that a visual inspection of each PCB Transformer in use or stored for reuse be performed at least once every 3 months. CDEL did not conduct quarterly visual inspections of the Westinghouse PCB Transformer. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.30(a)(1)(ix).
15. 40 C.F.R. § 761.40(a)(2) requires that PCB Transformers 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, shall be marked with an M_L marking as illustrated in the figure in 40 C.F.R. § 761.45(a). The Westinghouse PCB Transformer was not marked with a PCB label until on or about September 19, 2016. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.40(a)(2).
16. Pursuant to 40 C.F.R. § 761.60(a), PCB liquids must be properly disposed, as set forth in that subsection. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs greater or equal to 50 ppm constitute disposal of PCBs. The spill and leak from the Westinghouse PCB Transformer constituted improper disposal of PCB liquids. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.60(a).

IV. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
18. 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.
19. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
21. This CAFO constitutes a settlement by the EPA of all claims for federal civil penalties pursuant to Section 16(a) of TSCA, for only the specific violations alleged herein. The 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 the EPA, and it is Respondent's responsibility to comply with said laws and regulations.
22. 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

23. Respondent is assessed a civil penalty of **SIXTEEN THOUSAND SIX HUNDRED and FIFTY DOLLARS (\$16,650.00)**, which shall be paid within 30 days from the effective date of this CAFO.

24. 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) 425-1819

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
Beneficiary = U.S. Environmental Protection Agency

25. 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;

and

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

26. 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.

27. Pursuant to 31 U.S.C. § 3717, the 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.

28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

29. This CAFO shall be binding upon the Respondent, its successors and assigns.

30. Each undersigned representative 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.

[The remainder of this page is intentionally left blank.]

VI. Effective Date

31. 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: Clarksville Department of Electricity Lightband
Docket No.: TSCA-04-2017-2901(b)

By: Kim McMillan (Signature) Date: 9-26-17

Name: Kim McMillan (Typed or Printed)

Title: Mayor (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: G. Alan Farmer (Signature) Date: 9/27/17
G. Alan Farmer
Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 27th day of September, 2017.

By: Tanya Floyd
Tanya Floyd
Regional Judicial Officer
EPA Region 4

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 Clarksville Department of Electricity Lightband, Docket Number: TSCA-04-2017-2901(b), on 9-28-17, and on 9-28-17 served the parties listed below in the manner indicated:

Michi Kono (Via EPA Internal Mail)
Attorney
Office of Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Robert Caplan (Via EPA Internal Mail)
Senior Attorney
Office of Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

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

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

Mr. Brian Taylor (Via Certified Mail – Return Receipt Requested)
Clarksville Department of Electricity Lightband
City of Clarksville Tennessee
2021 Wilma Rudolph Blvd.
Clarksville, Tennessee 37040

Date:

9-28-17



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