



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 24 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Dan Hilyer  
General Manager  
The Utilities Board  
of the City of Opelika  
502 Geneva Street  
Opelika, Alabama 36803-1029

RE: The Utilities Board of the City of Opelika  
Consent Agreement and Final Order (CAFO)  
Docket No. TSCA-04-2012-2910(b)

Dear Mr. Hilyer:

Enclosed please find a copy of the executed 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 The Utilities Board of the City of Opelika on notice of its 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 black ink that reads "CÉSAR A. ZAPATA".

César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
)  
The Utilities Board of )  
the City of Opelika )  
Saugahatchee Water Filtration Plant )  
3901 Saugahatchee Lake Road )  
Opelika, Alabama 36801 )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2012-2910(b)

RECEIVED  
EPA REGION IV  
2012 JUL 24 PM 1:46  
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 RCRA Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is The Utilities Board of the City of Opelika.
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 by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Resource Conservation and Recovery Act (RCRA) Division by the EPA Region 4

Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA 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 the EPA promulgated regulations in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such regulation 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 the EPA in this proceeding:

Doug McCurry, Chief  
North RCRA and OPA Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8649.

### **III. Specific Allegations**

6. Respondent is 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 September 6, 2011, an inspection was conducted by the Alabama Department of Environmental Management (ADEM) at Respondent’s facility located at 3901 Saugahatchee Lake Road, Opelika, Alabama, 36801, to determine compliance with the PCB regulations.
8. Pursuant to 40 C.F.R. § 761.30(l)(1)(i), the use and storage for reuse of PCB Large High Voltage Capacitors and PCB Large Low Voltage Capacitors which pose an exposure risk to food and feed is prohibited.
9. At the time of the inspection, ADEM observed a small pump house operated by Respondent located on the edge of Saugahatchee Lake. The small pump house contained two (2) capacitors manufactured by Cornell Dubilier Electric Corporation in Plainsfield, New Jersey, 10 kva, 460 volts, 60 cycles, type PF 404-28, containing 1.0 gallon non-flammable fluid (serial numbers H01517 and CN73). A manufacture date was not indicated on the nameplate of either capacitor. Based on 40 C.F.R. § 761.2(a)(4), a capacitor with an unknown manufacture date is assumed to contain greater than 500 ppm PCBs. EPA alleges that the capacitors are PCB Large High Voltage Capacitors which are

in close proximity to drinking water and pose an exposure risk to drinking water.

Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.30(l)(1)(i).

#### **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.
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 the 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 the 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, 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.
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 shall pay a civil penalty of TWELVE DOLLARS (\$3,612), which shall be paid within 30 days from the effective date of this CAFO.

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  
PO 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  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, Missouri 63101  
(314) 418-1028

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:

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

Doug McCurry, Chief  
North RCRA and OPA Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

Saundi Wilson  
U.S. EPA Region 4  
61 Forsyth Street  
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, 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.
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. 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.

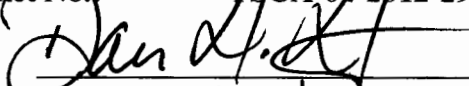
**VI. Effective Date**

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:** The Utilities Board of the City of Opelika

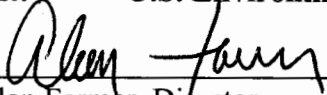
**Docket No.:** TSCA-04-2012-2910(b)

By:  (Signature) Date: 7/10/12

Name: Dan H. Hilyer (Typed or Printed)

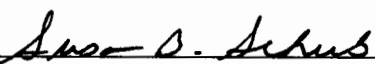
Title: General Manager (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 7/18/12

G. Alan Farmer, Director  
RCRA Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 24<sup>th</sup> day of July, 2012.

By:   
Susan B. Schub  
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), in The Utilities Board of the City of Opelika, Docket Number: TSCA-04-2012-2910(b), on 7-24-12, and on 7-24-12, served the parties listed below in the manner indicated:

Michi Kono (Via EPA Internal Mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

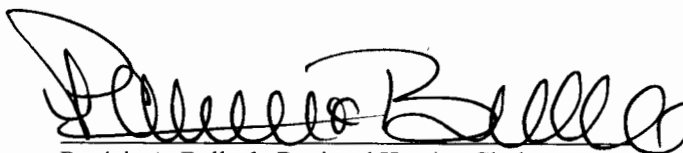
Kris Lippert (Via EPA Internal mail)  
RCRA and OPA Enforcement  
and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Tammye Cross (Via EPA Internal mail)  
RCRA and OPA Enforcement  
and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Dan Hilyer (Via Certified Mail – Return Receipt Requested)  
General Manager  
The Utilities Board  
of the City of Opelika  
502 Geneva Street  
Opelika, Alabama 36803-1029

Date:

7-24-12



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