



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

SEP 25 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary LeAnn Mynatt
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
265 Brookview Centre Way, Suite 600
Knoxville, Tennessee 37919

SUBJ: Rentenbach Constructors, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2909(b)

Dear Ms. Mynatt:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above, and in the CAFO, should be noted on any cashier's or certified check submitted for payment of the penalty.

Should you or your client have any questions about this matter, or your client's compliance status in the future, please contact Robert Caplan at (404) 562-9520, or Kris Lippert 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

Enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

In the Matter of:)
)
Rentenbach Constructors Incorporated)
2400 Sutherland Avenue)
Knoxville, Tennessee 37919)
)
Respondent.)
_____)

Docket No. TSCA-04-2018-2909(b)

USEPA REGION 4
OFFICE OF GENERAL
COUNSEL
2018 SEP 25 PM 2:42
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, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Rentenbach Constructors Incorporated.
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 "person" as defined in 40 C.F.R. § 761.3.
6. In or about July 2015, the Respondent entered into a Construction Manager/General Contractor Master Agreement with the State of Tennessee Department of General Services (TN DGS) to conduct certain activities at the Tennessee School for the Deaf (the School), located at 2725 Island Home Boulevard, Knoxville, Tennessee 37920, in connection with a demolition, renovation and construction project at the School.

7. In turn, the Respondent entered into a Subcontract Agreement in January 2016, with E. Luke Green (ELG) under which ELG performed certain demolition work at the School. At some time during the course of ELG's work at the School, a Westinghouse Inerteen PCB Transformer (Serial Number 654384Z) located in the in the basement of Poore Hall was taken out of service and/or stored in the basement for disposal. Respondent has asserted that when Respondent and ELG encountered the transformer, they asked the School's facilities manager about its status because hazardous material disposal was not a part of Respondent's contract with TN DGS. Respondent further asserts that the facilities manager orally advised them that the transformer had been tested for PCBs and that the results were negative, but that he could not find a copy of the lab report showing the sampling results.
8. Based on the statement of the School's facilities manager that the transformer tested negative for PCBs, Respondent and ELG decided that ELG could remove the transformer from the School. ELG subsequently transported the transformer to its facility located at 10909 McBride Lane, Knoxville, Tennessee where it was stored on a gravel parking lot that did not meet the storage requirements for out of service PCB items destined for disposal.
9. On May 11, 2016, during the course of storage of the Westinghouse Inerteen PCB Transformer at ELG's facility, a leak in the transformer was noticed and reported to the EPA National Response Center.
10. 40 C.F.R. § 761.3 defines a "PCB Transformer" as any transformer that contains ≥ 500 parts per million (ppm) PCBs. Analytical results of sampling of the transformer fluid conducted by a consultant for the TN DGS showed that the transformer contained

1,390,000 mg/kg (parts per million) PCBs, thereby confirming that the transformer removed from the School by ELG was a PCB Transformer.

11. Environmental sampling at ELG's property revealed that the gravel and soil surrounding the area where the transformer was leaking was contaminated with PCBs. In response to the leaking transformer and soil contamination, the TN DGS' environmental contractor removed and disposed of the transformer and cleaned up the PCB contamination at the facility.
12. In 1979, the manufacture of PCBs was banned under the PCB regulations. Prior to the ban, there were a number of PCB manufacturers, including Westinghouse, whose trade name for PCB fluids in its transformers was "Inerteen." The nameplate on the transformer that ELG removed and transported to its facility stated that it was a Westinghouse Inerteen Transformer. The nameplate did not include the date of manufacture of the transformer. Under the PCB "assumption" rules found at 40 C.F.R § 761.2, if the date of manufacture is not marked on the transformer, it must be assumed that the transformer is a PCB Transformer (containing > 500 ppm PCBs) unless the transformer is, or has been tested and found not to contain PCBs, or has PCBs below 500 ppm.
13. Since the transformer removed by ELG had no date of manufacture on it and was marked as an Inerteen transformer, and because no analytical sampling data report was provided to the Respondent and ELG verifying that the transformer had no PCBs or that concentrations were below 500 ppm, the Respondent and ELG were required to assume that transformer was a PCB Transformer and to have handled it in accordance with the

- PCB regulations, unless and until they obtained analytical sampling results showing that it was not a PCB Transformer.
14. 40 C.F.R. § 761.3 defines “PCB Items” 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.
 15. 40 C.F.R. § 761.3 defines “PCB Waste” as those PCBs and PCB Items that are subject to the disposal requirements found in 40 C.F.R. Part 761, Subpart D.
 16. Pursuant to 40 C.F.R. § 761.3, “Generator of PCB waste” means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of Part 761, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of Subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of Subpart D of this part.
 17. Pursuant to 40 C.F.R. § 761.3, “Transporter of PCB waste” means for purposes of 40 C.F.R. Part 761, Subpart K, any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for purposes other than consolidation by a generator.
 18. 40 C.F.R. § 761.202(b)(2)(i) prohibits a transporter from transporting PCB waste without first having received an EPA identification number from EPA.
 19. Pursuant to 40 C.F.R. § 761.202(b)(1)(ii), after June 4, 1990, a generator of PCB waste is prohibited from offering PCB waste to any transporter, disposer, or commercial storer of PCB waste who has not received an EPA identification number.
 20. Respondent, in its capacity as a generator of PCB waste, as those terms are defined in 40 C.F.R. § 761.3, offered and/or allowed ELG to take and to transport and dispose of the

PCB Transformer, a PCB waste, at a time when ELG did not have an EPA identification number. Therefore, the EPA alleges that the Respondent violated 40 C.F.R. § 761.202(b)(1)(ii).

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
22. 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.
23. 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.
24. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
25. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
26. 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

27. Respondent is assessed a civil penalty of **THREE THOUSAND THREE HUNDRED AND SIX DOLLARS (\$3,306.00)**, which shall be paid within 30 days from the effective date of this CAFO.
28. 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

29. 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.

30. 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.
31. 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.
32. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
33. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

34. This CAFO shall be binding upon the Respondent, its successors and assigns.
35. 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

36. 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: Rentenbach Constructors Incorporated
Docket No.: TSCA-04-2018-2909(b)

By: Matthew T. Chappelle (Signature) Date: 9/18/2018
Name: Matthew T. Chappelle (Typed or Printed)
Chief Financial Officer
Title: _____ (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Susan Hansen Date: 9/25/18
Susan Hansen
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 25th day of September, 2018.

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

This CMO shall be binding upon the Respondent, its successors and assigns.
The Respondent shall be responsible for the payment of the CMO and shall be
responsible for the payment of the CMO and shall be responsible for the
payment of the CMO.

7.1. Effective Date

The Respondent shall be responsible for the payment of the CMO and shall be
responsible for the payment of the CMO.

AGREED AND CONSENTED TO

Respondent: [Name] [Address] [City] [State] [Zip]
Contact: [Name] [Phone Number]

[Signature]
[Name]
[Title]

Matthew T. Chappelle
Chief Financial Officer

[Name]
[Title]

Complaint: [Name] [Address] [City] [State] [Zip]

[Signature]
[Name]
[Title]

[Name]
[Title]
[Address]
[City] [State] [Zip]

APPROVED AND SO ORDERED
[Name]
[Title]

[Signature]
[Name]
[Title]

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 Rentenbach Constructors, Inc., Docket Number: TSCA-04-2018-2909(b), on 9-25-18, and on 9-25-18, served the parties listed below in the manner indicated:

Mary LeAnn Mynatt
Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
265 Brookview Centre Way, Suite 600
Knoxville, Tennessee 37919

(Via Certified Mail – Return Receipt Requested)

Robert Caplan
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

(Via EPA Internal Mail)

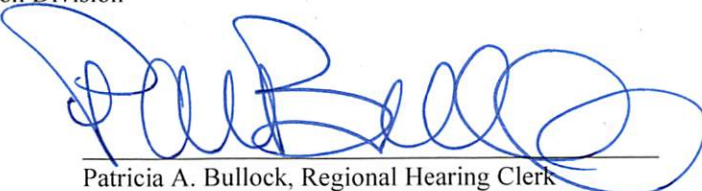
Kris Lippert
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(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)

Date: 9-25-18



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