



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

NOV 22 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nathan Dockery
Lupton City, LLC
103 Guthrie Way
Peachtree City, Georgia 30269

Re: Lupton City, LLC
Consent Agreement and Final Order
Docket No. TSCA-04-2016-2905(b)

Dear Mr. Dockery:

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 Lucia Mendez, at (404) 562-9637.

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

2016 NOV 22 AM 7:05
HEARING CLERK
OFFICE OF GENERAL COUNSEL
USEPA REGION 4

In the Matter of:)
)
Lupton City, LLC)
1210 Mercer Street)
Lupton City, Tennessee 37351)
)
Respondent.)
_____)

Docket No. TSCA-04-2016-2905(b)

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 Lupton City, LLC.
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 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
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
(404) 562-8605

III. Specific Allegations

6. Respondent was a user of "PCB Items", as defined in 40 C.F.R. § 761.3, operating in the State of Tennessee and is a "person" as defined in 40 C.F.R. § 761.3.

7. On or about May 10, 2012, and March 4, 2015, inspections were conducted at a facility owned and operated by Respondent, located at 1210 Mercer Street, Lupton City, Tennessee (the Facility), by the Tennessee Department of Environmental Conservation (TDEC) and EPA, respectively, to determine compliance with the PCB regulations.
8. On or about October 9, 2012, and October 19, 2012, inspections were conducted at the Facility by the TDEC's Division of Solid Waste Management to determine compliance with the State of Tennessee solid waste regulations.
9. During the inspection on May 10, 2012, Respondent was storing for disposal the following PCB Items: two hundred and five (205) PCB Large High Voltage Capacitors, seven (7) drained containers of PCB Electrical Equipment, and three (3) totes of PCB-Contaminated liquid.
10. The PCB items listed in Paragraph 9 above remained on-site until they were manifested off-site (manifest number 014012155 JJK) on March 2, 2015.
11. During the October 9, 2012, and October 19, 2012, inspections, TDEC documented a pallet of damaged PCB Large High Voltage Capacitors leaking fluid onto the ground, a large transformer stored next to six (6) totes leaking fluid onto the ground and one (1) PCB Large High Voltage Capacitor sitting on the floor leaking in the north east room of the southern building. A soil sample collected by Florida Transformer, Inc., analyzed on March 14, 2013, showed 592,000 ppm PCB Aroclor 1254.
12. 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.
13. 40 C.F.R. § 761.3 defines PCB Containers as any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
14. 40 C.F.R. § 761.3 defines PCB Articles as any manufactured article, other than a PCB Container, that

contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

15. 40 C.F.R. § 761.3 defines Large High Voltage Capacitors as any capacitor which contains 1.36 kilograms (3 pounds) or more of dielectric fluid and which operates at 2,000 volts (alternating current or direct current) or above.
16. 40 C.F.R. § 761.65(c)(5) requires all PCB Items in storage to be checked for leaks at least once every 30 days and records of those inspections to be maintained in accordance with 40 C.F.R. § 761.180(a) and (b). At the time of the May 10, 2012, and March 4, 2015, inspections, Respondent was asked to provide documentation of inspections and no documentation of inspections was provided to the inspectors showing that inspections had been conducted by Respondent on any of the PCB Items listed in paragraph 9 above. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(5) and 40 C.F.R. § 761.180(a).
17. 40 C.F.R. § 761.180(a) requires a written annual document log and annual records for anyone that uses or stores at any one time at least 45 kilograms of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors. The log must be prepared by July 1 for the previous calendar year and maintained for three years after PCBs are ceased being used or stored. During the March 4, 2015, inspection, Respondent was asked to provide the written annual document logs and no written annual document log and/or annual records were available nor was any evidence presented that Respondent had kept the required log. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.180(a).
18. Pursuant to 40 C.F.R. § 761.65(b)(1), 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 May 10, 2012, inspection, Respondent was storing the PCB Items listed in paragraphs 9 and 11 above for disposal in areas that did not meet the requirements of 40 C.F.R. § 761.65(b)(1). Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(b)(1).

19. 40 C.F.R. § 761.40(a) requires that PCB Containers and PCB Large High Voltage Capacitors 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). At the time of the May 10, 2012, inspection, the PCB Containers and PCB Large High Voltage Capacitors listed in paragraph 9 above were not marked with the appropriate PCB label. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.40(a).
20. Pursuant to 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked as illustrated in 40 C.F.R. § 761.45(a). At the time of the May 10, 2012 inspection, Respondent was storing for disposal the PCB Items listed in paragraph 9 above in areas that did not meet the requirements of 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3). Therefore, Respondent violated 40 C.F.R. §§ 761.40(a)(10), 761.40(h) and 761.65(c)(3).
21. 40 C.F.R. § 761.65(c)(8) requires that PCB Items be marked with the date when they were removed from service for disposal. At the time of the May 10, 2012, inspection, the PCB Items listed in paragraph 9 above being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(8).
22. 40 C.F.R. § 761.65(a)(1) requires that any 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. During the May 10, 2012 inspection, Respondent could not provide any documentation showing how long the PCB Items listed in paragraph 9 above that were being

stored for disposal had been out of service, nor could Respondent demonstrate that the PCB Items had been out of service less than one year. The PCB Items listed in paragraph 9 above were stored for disposal on-site from at least May 10, 2012, until March 2, 2015. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.65(a)(1).

23. 40 C.F.R. § 761.205(c)(2) requires PCB generators subject to the storage requirements of 40 C.F.R. §§ 761.65(b) or (c)(7) to notify EPA of their PCB waste activities by filing EPA Form 7710-53 before they commence storage of PCBs at their facilities. At the time of the May 10, 2012, and March 4, 2015, inspections, Respondent had failed to notify EPA of the PCB waste activities by filing EPA Form 7710-53. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.205(c)(2).
24. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs greater or equal to 50 ppm constitutes disposal of PCBs. PCB liquids at concentrations \geq 50 ppm that have been spilled must be cleaned up and disposed of as directed in 40 C.F.R. § 761.60(a). At the time of the March 4, 2015, inspection, Respondent had not addressed the contamination from the PCB Items, identified in paragraph 11 above, that were leaking. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.50(a)(4).

IV. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
26. 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.
27. 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.
28. EPA evaluated the financial documentation provided by Respondent along with its claim that it had limited funds to pay the penalty proposed by EPA to settle this matter. EPA concluded that

Respondent had limited funds to pay the proposed federal penalty. The parties have agreed to settle this matter for \$1,000.

29. 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 Respondents' responsibility to comply with said laws and regulations.
30. EPA Region 4's Superfund Division has found that the soil at Respondent's facility is contaminated with polycyclic aromatic hydrocarbons (PAHs) and anticipates conducting a fund-lead removal action pursuant to the Comprehensive Environmental Response and Compensation and Liability Act (CERCLA), 42 U.S.C. A. §§ 9601 et seq. This CAFO does not release Respondents from potential liability for the cost of EPA Superfund removal activities at the property pursuant to the Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607.
31. 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

32. Respondent is assessed a civil penalty of ONE THOUSAND DOLLARS (\$1,000.00), which shall be paid within 30 days from the effective date of this CAFO.
33. 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."**

34. 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
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

and

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

35. 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.
36. 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.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. 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

40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

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AGREED AND CONSENTED TO:

Respondent: Lupton City, LLC
Docket No.: TSCA-04-2016-2905(b)

By: [Signature] (Signature) Date: 9-1-16

Name: NATHAN DE LUCCI ON BEHALF OF LUPTON CITY, LLC (Typed or Printed)

Title: MEMBER (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: [Signature] Date: 11-7-2016

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

APPROVED AND SO ORDERED this 18th day of November 2016.

By: [Signature]
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 Lupton City, LLC., Docket Number: TSCA-04-2016-2905(b), on 11-22-16, and on 11-22-16 served the parties listed below in the manner indicated:

Lucia Mendez (Via EPA Internal Mail)
Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

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

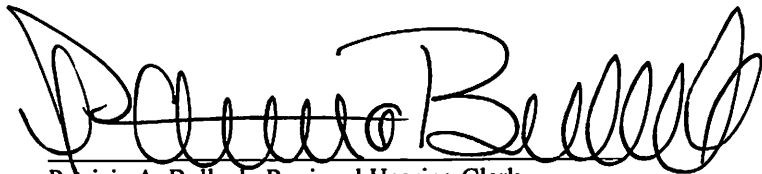
Kris Lippert (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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. Nathan Dockery (Via Certified Mail – Return Receipt Requested)
Lupton City, LLC
103 Guthrie Way
Peachtree City, Georgia 30269

Date:

11-22-16



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