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

NOV 04 2016

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

Ms. Rebecca W. Pritchett, Esq.
Pritchett Environmental & Property Law, LLC
P.O. Box 361074
Birmingham, Alabama 35236

SUBJ: Consent Agreement and Final Order - Docket No. TSCA-04-2016-2904(b)
SBN Bessemer, LLC

Dear Ms. Pritchett:

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.

Thank you for your cooperation in reaching resolution of this matter. If you have any questions or concerns, please contact Attorney-Advisor, Ms. Ellen Rouch, at (404) 562-9575.

Sincerely,

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

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL
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HEARING CLERK

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| In the Matter of: | ) | |
| | ) | |
| SBN Bessemer LLC | ) | Docket No. TSCA-04-2016-2904(b) |
| 2601 5th Avenue North | ) | |
| Bessemer, Alabama 35020 | ) | |
| | ) | |
| | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

## 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 (RCRD), United States Environmental Protection Agency, Region 4 (EPA). The Respondent is SBN Bessemer 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 RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD 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 the 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 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 the EPA in this proceeding:

Randy Jackson
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8464

## III. Specific Allegations

6. Respondent SBN Bessemer LLC, is a limited liability company operating in the State of Alabama, and is a "person" as defined in 40 C.F.R. § 761.3. SBN Bessemer LLC, is the owner of a facility located at 2601 5th Avenue North, Bessemer, Alabama, 35020 (the facility), and was a user of PCB Items.
7. On or about January 16, 2012, and January 14, 2014, inspections were conducted by the Alabama Department

of Environmental Management (ADEM) at the facility to determine compliance with the PCB regulations.

8. During the January 16, 2012, inspection, ADEM observed the following out of service PCB Items being stored on-site for disposal:

    a. Twenty-one (21) Outdoor Westinghouse Inerteen large PCB capacitors. The capacitors were out of service and stored on the floor of the Powerhouse Building;
    b. Twenty-two (22) General Electric Magvar large PCB capacitors. The capacitors were out of service and stored on the floor of the Powerhouse Building;
    c. Thirty-three (33) large PCB capacitors were located on elevated catwalks in Bldg. D-1;
    d. Four (4) GE Pyranol large PCB capacitors were located on the floor inside Building C-1;
    e. One (1) Allis Chalmers PCB transformer with the serial number 3153510, with a name plate indicating that it contained 388 gallons of Chlorextal PCB oil; located outside between the office building and the northwest end of Building D-1 (Trinity Bldg.). The transformer was marked with a PCB $M_L$. On the right side of the transformer was a 3 foot diameter spill of PCB oil onto the soil originating from the drain valve of the transformer;
    f. One (1) General Electric PCB transformer with serial number G8553847 with a name plate indicating it contained 180 gallons of PCB oil; located on the northeast side of Building C-1;
    g. One (1) Westinghouse PCB transformer with serial number 65M4808 with a name plate that indicated 150 KVA. The transformer was marked with a PCB $M_L$. The transformer was located on the floor of the Powerhouse Building.

9. During the January 14, 2014, inspection, ADEM inspectors observed the following PCB waste stored for disposal:

    a. Two (2) 55-gallon drums marked "Caution contains PCBs" were sitting on the ground without containment, in the corner of Building D-1 where the leaking Allis Chalmers transformer had been stored. The drums contained soil that had been contaminated with PCBs from the leaking transformer. The drums were not marked with a date.

10. According to manifests provided by the Respondent to EPA subsequent to the January 2012 inspection, the transformers and capacitors were manifested and shipped for disposal to TCI of Alabama on June 3, 2013. The two drums of PCB waste were manifested and shipped for disposal to Chemical Waste Management on March 31, 2015.

11. 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. The PCB capacitors, PCB transformers, and drums of PCB-contaminated soils listed in paragraphs 8 and 9 above were PCB Items.

12. 40 C.F.R. § 761.180(a) requires the owner or operator of the facility to develop and maintain annual records and an annual document log that is to be maintained at the facility. The Respondent failed to provide any records or an annual document log for the PCB Items listed in Paragraphs 8 and 9, either during the inspections or subsequently. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.180(a).

13. 40 C.F.R. § 761.40(a)(10) requires the storage areas used to store PCBs and PCB Items for disposal to be marked in accordance with 40 C.F.R. § 761.45(a). This requires that the storage area shall be marked with the large PCB Mark ($M_{L)}$. At the time of the inspections, the storage areas were not marked with the $M_{L.}$ and did not meet the requirements of 40 C.F.R. § 761.40(a)(10). Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.40(a)(10).

14. 40 C.F.R. § 761.65(c)(5) requires that PCB Items in storage for disposal shall be checked for leaks at least once every 30 days. Respondent could not provide records of inspections and cleanups of the PCB Items listed in Paragraphs 8 and 9. Additionally, the Respondent's apparent failure to inspect the PCB Items resulted in the Respondent not being aware of the release of PCBs from the Allis Chalmers transformer located between an office building and the northwest end of Building D-1, and not taking necessary, immediate steps to prevent and/or clean up the spill of PCB oil. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(c)(5).

15. 40 C.F.R. § 761.65(c)(8) requires that PCB Items must be marked with the date when they were removed from service for disposal. At the time of the January 16, 2012, inspection, the PCB transformers and PCB capacitors had been removed from the electrical system and stored on the floor of the Powerhouse Building, the floor of Building C-1, outside Building C-1 and outside Building D-1 and on the catwalks of Building D-1. The PCB items that had been removed from electrical service and stored in the locations noted above were not marked with the out of service dates. Therefore, EPA alleges that the Respondent violated 40 C.F.R.

§ 761.65(c)(8).

16. 40 C.F.R. § 761.65(a)(1) requires that PCB waste must disposed within a 1-year time-frame from the date it was determined to be PCB waste and the decision was made to dispose of it. The PCB Items listed in Paragraph 8 were observed to be out of service during ADEM's January 16, 2012, inspection. During that inspection, the transformers and capacitors had been removed from the electrical system and stored inside the Powerhouse Building, and inside and outside Buildings C-1 and D-1. According to manifests provided by the Respondent to EPA after the July 1, 2015, Show Cause meeting, these PCB Items were not manifested and shipped for disposal until June 3, 2013, more than a year after ADEM's inspection. Also, the PCB waste identified in Paragraph 9 was observed during the January 14, 2014, inspection, but was not manifested and shipped for disposal until March 3, 2015. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(a)(1).

17. 40 C.F.R. § 761.207(a) requires the generator of PCB waste who offers PCB waste for offsite disposal to prepare a manifest. Additionally, 40 C.F.R. § 761.210(a)(1) requires the generator of PCB waste to sign the manifest certification by hand. Subsequent to ADEM's January 16, 2012, inspection, Respondent's remediation contractor, Spectrum Environmental Service, shipped the PCB waste identified in paragraph 8 from Respondent's facility for disposal. The shipment was documented in a June 3, 2013, manifest (011766116JJK) that was signed by Karl Peters of Spectrum Environmental Service. Mr. Peters advised EPA that he prepared and signed the manifest. Because the manifest was not prepared or signed by the Respondent, who was the generator of the PCB wastes, EPA alleges that the Respondent violated 40 C.F.R. §§ 761.207(a) and 761.210(a)(1).

18. 40 C.F.R. § 761.205(a)(2) requires all PCB generators to notify the EPA of their PCB waste activities by filing EPA Form 7710-53. The Respondent failed to notify the EPA of the PCB waste activities by filing the EPA Form 7710-53. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.205(a)(2).

19. 40 C.F.R. § 761.65(b)(1) requires storers of PCB waste to ensure that storage areas provide adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items. At the time of ADEM's inspections, the Respondent had stored PCB Items outside without adequate roofs and walls as required by

40 C.F.R. § 761.65(b)(1). Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.65(b)(1).

## IV. Consent Agreement

20. For the purposes of this CAFO, the Respondent admits the jurisdictional allegations set forth above and neither admit nor deny the factual allegations.
21. The 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.
22. For the purposes of achieving a resolution by settlement, the 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.
23. The 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 and the PCB regulations.
24. 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.
25. Complainant and the 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

26. The Respondent is liable for a civil penalty in the amount of ONE HUNDRED EIGHTEEN THOUSAND AND ONE HUNDRED DOLLARS ($118,100.00), which shall be paid within 30 days from the effective date of this CAFO.
27. The 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, the 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
5 U.S.C. § 552 (b)(4) Confidential Business Information
[redacted]

28. 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;

Randy Jackson
RCRD Enforcement and Compliance Branch
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

29. 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.

30. 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.

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

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

33. Each undersigned representatives 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

34. 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:**

**Docket No.:** **TSCA-04-2016-2904(b)**

**Respondent:** **SBN Bessemer LLC**

By: _____(Signature) Date: October 7, 2016

Name: David Prael (Typed or Printed)

Title: Chief Financial Officer (Typed or Printed)

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

By: _____ Date: 10/18/16

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

**APPROVED AND SO ORDERED** this 3rd day of November, 2016.

By: _____

Tanya Floyd
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, In the Matter of: SBN Bessemer LLC, Docket No. TSCA-04-2016-2904(b), on 11-4-16 and on 11-4-16, served the parties listed below in the manner indicated:

Ms. Rebecca W. Pritchett, Esq.
Pritchett Environmental &
& Property Law, LLC
Post Office Box 361074
Birmingham, Alabama 35236

(Via Certified Mail, Return Receipt Requested)

Ellen Rouch, Attorney-Advisor
USEPA, Region 4, ORC
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal Electronic Mail)

Robert Caplan, Senior Attorney
USEPA, Region 4, ORC
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal Electronic Mail)

Randy Jackson
Enforcement and Compliance Branch
USEPA, Region 4, RCRD
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal Electronic Mail)

Quantindra Smith
Enforcement and Compliance Branch
USEPA, Region, RCRD
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal Electronic Mail)

11-4-16
date

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