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U.S. v. AVX Original
Litigation Document

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In re:)	
)	TSCA Docket No.
Cornell-Dubilier Electronics)	81-1001
Corporation)	
1604 East Rodney French Boulevard)	
New Bedford, Massachusetts 02744)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent)	

I. PRELIMINARY STATEMENT

1. This is a consent agreement and final order terminating an administrative proceeding under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a). The proceeding was instituted by the United States Environmental Protection Agency (EPA), Region I, by issuance of a Complaint and Notice of Opportunity for Hearing charging Respondent, Cornell-Dubilier Electronics Corporation (CDE), with violations of 15 U.S.C. §§2605 and 2614, and the regulations promulgated thereunder, 40 C.F.R. Part 761 (Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions). As more fully set forth below, CDE and EPA have agreed to cooperate fully in settling this matter in a forward-looking and environmentally beneficial manner. CDE therefore has agreed to enter into the Consent Agreement and Final Order contained herein.

2. For the purposes of this proceeding only, CDE admits the jurisdictional allegations contained in the Complaint.

3. CDE neither admits nor denies the remaining factual and legal allegations contained in the Complaint.

4. CDE waives its right to request a hearing on any issue consented to herein.

5. It is further agreed between EPA and CDE that implementation of the action program called for in the Order shall constitute a full and final disposition of all charges and allegations concerning activities, operations or conditions on the site of CDE's New Bedford, Massachusetts plant (the plant site), excluding any off-site effects, which are contained in the Complaint, TSCA Docket No. 81-1001, or which could have been included in the Complaint on the basis of the Versar Inc. report to EPA dated June 19, 1981.

6. In mitigation of the penalty proposed in the Complaint, CDE desires to cooperate with EPA by proposing and agreeing to undertake the measures set forth in an action plan for the plant site attached hereto as Appendix A.

7. Because CDE has agreed to enter into this consent order, EPA finds that final determinations of the factual issues raised by the Complaint are unnecessary.

8. EPA finds that CDE will be making extensive, environmentally beneficial expenditures to carry out measures necessary for compliance with the Final Order. These measures include:

A. Handling System

Measures for evaluating and monitoring of the waste dielectric fluid handling system at the CDE plant and for assuring compliance with 40 C.F.R. Part 761.

B. Aqueous Discharges

Measures for identification of the aqueous discharge points from the CDE plant into the municipal sewer system and for sampling and analysis to ascertain the nature and extent of actual or potential PCB releases into the municipal sewer system, including sampling and analysis of aqueous flow at discharge points from the plant.

C. Sediments

Measures for removal of any existing sediments from waste streams in CDE's plant and proper disposal of any such sediments in compliance with 40 C.F.R. Part 761 and any other applicable requirements.

D. Plant Yard

Measures to control releases of PCBs or PCB-contaminated materials from the plant yard behind the plant into the sewer lines, the air, or otherwise into the surrounding environment. Such measures shall include paving or capping; removal of the two piles of soil sampled by Versar, Inc., during the course of its inspection of the plant site on June 19, 1981 and proper disposal of the two piles of soil in compliance with the requirements of 40 C.F.R. §761.10;

provisions for a drainage system for the paved or capped areas; provisions for long-term maintenance of the paving, capping, and drainage systems and for the paved and capped areas.

F. Groundwater Monitoring

Measures for construction of monitoring wells and for monitoring and reporting to commence after completion of the containment measures described in paragraph 4, above, to determine whether transport of PCBs is occurring.

9. In light of CDE's cooperative attitude and the measures it has agreed to carry out, EPA concludes that the penalties sought in the Complaint should be mitigated to zero.

10. Reservations of Rights

EPA retains the right to initiate subsequent enforcement proceedings based on developments which take place or information which is received after the date of this Consent Agreement and Final Order, including developments or information arising in the course of CDE's implementation of this Order. Such proceedings may be initiated by EPA pursuant to its authority under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., or any other relevant provisions of law. Nothing in this Order shall be construed to limit such authority. CDE retains the right to contest any further orders or actions brought by EPA or by any other persons.

FINAL ORDER

Based on the foregoing,

IT IS HEREBY ORDERED:

I. General Provisions

A. Designation of Coordinator

Within thirty (30) days of issuance of this Order, CDE shall designate a coordinator, who shall be responsible for administration of studies called for by this Order, and submit the coordinator's name to EPA. EPA shall at the same time designate a coordinator for administration of its responsibilities and receipt of all written matter required by this Order.

B. Prior Approval; Emergency Action

CDE shall refrain from taking any action which might conflict, interfere or be inconsistent with the implementation of this Order unless such action has been approved in advance by EPA; provided, however, that CDE may, if necessary, take reasonable measures if sudden or unexpected events have made prior consultation infeasible, under which circumstances CDE shall notify and consult with EPA as soon as reasonably possible.

C. Independent Consultants

All proposals, studies, and reports required by this Order to be submitted by CDE shall be prepared or reviewed by an independent consultant or consultants.

D. Access to CDE Property and Information

Upon the issuance of this Order and until the fulfillment of all of the provisions contained herein, CDE shall permit EPA and its designated employees, professional consultants and other authorized representatives, to enter and inspect the plant site during normal business hours for the purpose of (1) verifying that no action is being taken in violation of this Order, (2) observing, monitoring and sampling of soils, surface and ground waters, effluent, wastes or any material which has escaped its container, whether in or upon the ground or on CDE's property, (3) inspecting records relative to matters covered by this Order, (4) monitoring the progress of CDE in fulfilling the provisions of this Order, and (5) verifying any information submitted by CDE to EPA in accordance with the implementation of this Order. Without limiting the scope of the foregoing, EPA shall make reasonable efforts in good faith to coordinate its entries and other actions under this paragraph with those of state and local agencies relating to the matters covered herein. All information disclosed or submitted by CDE pursuant to this Order shall be subject to the confidentiality provisions set forth in Part IV of this Order.

E. Advance Notice and Duplicate Samples

CDE and EPA shall provide notice to each other of any excavating, drilling, or sampling to be conducted pursuant to this Order at least five (5) working days in advance of

the date of such excavating, drilling or sampling, and each party shall provide to the other, upon request and to the extent feasible, a duplicate of any sample taken pursuant to this Order. In the event that CDE or EPA wishes to take action prior to expiration of the five-day notice period, the other party should be informed and its consent obtained. CDE and EPA shall cooperate with each other, and each will provide to the other on request any information in its possession regarding the matters covered by this Order.

F. Quality Control

CDE and its consultants shall allow EPA to examine the quality control procedures in use in the sampling and analysis undertaken pursuant to this Order. Such procedures shall conform with industrial practices necessary to implement this Order.

G. Analytical Procedures

All sampling and analysis conducted by CDE pursuant to this Order shall be performed according to approved analytical procedures and protocols for analysis of PCB content. In any measurement of PCB concentration in any soil or sediment samples for the purposes of this Order, the weight of the sample shall be its dry weight.

H. Coordination With State Agencies

CDE and EPA shall use their best efforts in good faith to coordinate the actions required to be taken under this Order

with the actions to be taken under any order which may be issued by the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to CDE. EPA and CDE shall make all reasonable efforts to coordinate all actions taken under this Order with state and local agencies. Such coordination shall include provision of notice and duplicate samples, upon request.

II. Program of Action

A. Implementation

Upon issuance of this Order, CDE shall implement the approved action program, as set forth in Appendix A of this Order, within the approved schedule included in Appendix A.

B. Recorded Notice

Within ninety (90) days of issuance of this order, CDE shall submit to EPA, for review and approval, a proposed notice of the following measures to be recorded in the Bristol County Registry of Deeds: the containment measures taken in the plant yard; the long term paving maintenance measures; and the water monitoring measures approved and required pursuant to this Order.

C. Reports

Ninety (90) days after issuance of this Order, CDE shall submit to EPA a report describing its progress with the program of action. Within ninety days after completion of all measures other than long-term monitoring and

maintenance, CDE shall submit a final report describing the work that has been carried out and the results that have been obtained.

CDE shall notify EPA of any failure to meet any date in the approved schedules, and of any other significant delays. The reports shall include a statement of the cause of such delays, the date by which the delayed elements of the study will be completed, and the effect on CDE's ability to meet the remaining schedule for completion of the study.

D. Modification of Plans

At any time in the course of implementation of the remedial action program, CDE or its consultants may confer with EPA concerning the program. CDE may request EPA approval, based on new information or changed circumstances, of modifications to the measures and procedures previously approved. Approval or disapproval of substantive modifications shall be provided in writing, and if approved, shall be implemented upon approval.

III. Post-Containment Monitoring, Maintenance, and Notice to Subsequent Owners

A. Long-term Monitoring and Maintenance

Upon completion of the containment measures in the plant yard, CDE shall commence the program of long-term monitoring and maintenance set forth in Appendix A. The program shall

include selection of locations for three to five run-off monitoring sites, which locations shall be subject to EPA approval.

B. Recorded Notice

Upon completion of the containment measures in the plant yard, CDE shall record the notice to subsequent owners and operators which has been submitted to EPA and approved pursuant to Part II, paragraph B, above.

C. Reporting; Modification of Plans; Continued Monitoring

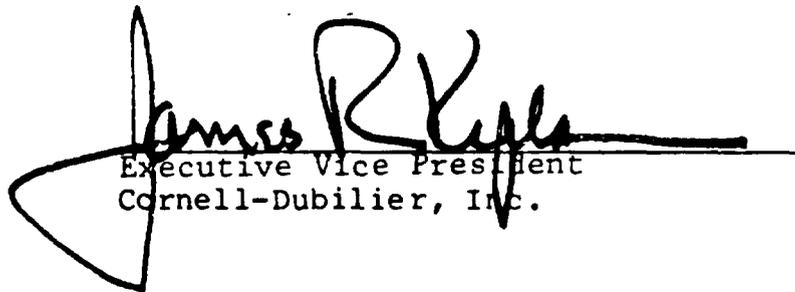
CDE shall provide reports on the results obtained from the long-term monitoring program, according to the approved schedule in Appendix A. In the course of the monitoring program, CDE may confer with EPA, and, if it chooses, request EPA approval of a modification of the schedule or termination of the program, on the basis that the data shows that such changes would be appropriate. Approval or disapproval of substantive modifications shall be provided in writing, and the modification, if approved, shall be implemented upon approval.

EPA reserves the right to take new action for the purpose of requiring continued monitoring beyond the schedule in Appendix A if EPA determines on the basis of the available evidence that continued monitoring is necessary.

IV. Confidentiality

CDE may assert a business confidentiality claim covering part or all of the information requested by this Order, in the manner described by 40 C.F.R. §2.203(b), 41 Fed. Reg. 36907 (September 1, 1976). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B, 41 Fed. Reg. 36906-36918 (September 1, 1976). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to CDE.

Date: May 13, 1982


Executive Vice President
Cornell-Dubilier, Inc.

Date: 5/17/82


Regional Administrator
Environmental Protection Agency