



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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BOSTON, MASSACHUSETTS 02114-2023

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March 19, 2009

EPA ORC
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REGIONAL HEARING CLERK

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

RE: In the Matter of: Bridgeport United Recycling, Inc.,
Docket No. TSCA-01-2009-0040

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and Notice of Opportunity for Hearing and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin

William D. Chin
Enforcement Counsel

Enclosures

cc: David J. Carabetta (BUR)

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Complaint and Notice of Opportunity for Hearing to be sent to the following persons, in the manner stated, on the date below:

Original and one copy,
hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114

One copy, by Certified Mail,
Return Receipt Requested:

David J. Carabetta
President
Bridgeport United Recycling
47 Gracey Avenue
Meriden, CT 06450-0902

Dated: _____

3/19/09

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (Mail Code: SEL)
Boston, MA 02114

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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In the Matter of:)

Bridgeport United Recycling, Inc.)
47 Gracey Avenue)
Meriden, CT 06451)

Docket No.)
TSCA-01-2009-0040)
COMPLAINT AND NOTICE OF)
OPPORTUNITY FOR HEARING)

Respondent)

Proceeding under Section 16(a))
of the Toxic Substances Control)
Act, 15 U.S.C. § 2615(a).)

COMPLAINT

1. Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), issues this administrative Complaint and Notice of Opportunity for Hearing to Bridgeport United Recycling, Inc. ("BUR" or "Respondent") under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. This Complaint notifies Respondent that EPA intends to assess penalties for an alleged violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The alleged violation involves omissions and inaccuracies in a

manifest for waste containing PCBs. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

I. STATUTORY AND REGULATORY BASIS

2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), in turn, states that it shall be unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA.

3. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), requires EPA to promulgate rules with respect to the disposal of PCBs.

4. The PCB Regulations at 40 C.F.R. Part 761 were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

5. The PCB Regulations "establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." 40 C.F.R. § 761.1(a).

II. GENERAL ALLEGATIONS

6. Respondent is a corporation incorporated under the laws of the State of Connecticut.

7. Respondent owns and operates a RCRA treatment, storage and disposal facility ("TSDF") located at 50 Cross Street in

Bridgeport, Connecticut. At this facility, Respondent manages liquid and solid materials in bulk and containerized packages, including hazardous and nonhazardous wastes, off-specification virgin materials, lab packs, contaminated soils, scrap metal, flammables, combustibles, acids, and caustics. Respondent also recovers, recycles and reuses some of this material.

8. Respondent is owned and operated by United Oil Recovery, Inc. ("United"), which owns and operates a fleet of over 150 waste transportation vehicles as well as several other hazardous waste management facilities in Connecticut, Massachusetts, New Hampshire, and New York (including Norlite, a hazardous waste treatment and recovery facility in Cohoes, NY).

9. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

10. On April 1, 2008, at the request of Connecticut Transfer Company, LLC ("CTC"), United dispatched one of its vacuum trucks to pick up hazardous waste material from the former site of the Old Bridgeport Brass Company ("OBBC"), located at 560 North Washington Avenue, Bridgeport, Connecticut. CTC is the present owner of the OBBC site. During this waste pickup, United removed a total of 883 gallons of liquid waste from two 55-gallon drums and a transformer located on the site.

11. Approximately two weeks prior to the waste pickup at the OBBC site, described in Paragraph 10 above, BUR had a lab

analyst perform a waste profile on a sample of the waste from the OBBC site. The resulting waste profile indicated a high concentration of solvent in the waste but did not detect the presence of PCBs.

12. After leaving the OBBC site on April 1, 2008, the United vacuum truck made additional scheduled waste pickups at three other companies before returning to BUR with a total of 3,317 gallons of waste material. The mixed waste from the truck was then sampled and analyzed for BUR by the same analyst who performed the original waste profile of the OBBC waste two weeks earlier. PCBs were again not detected in this second sample.

13. BUR "topped off" the load of waste, described in Paragraph 12 above, with additional waste from other sources, now creating a total volume of 5,000 gallons of waste (collectively, the "Waste"). On April 2, 2008, BUR then shipped the Waste to Norlite for use as fuel. BUR identified the Waste on Manifest No. 000047996UIS as "waste flammable liquid."

14. BUR identified itself as the "generator" of the Waste on Manifest No. 000047996UIS.

15. Upon receipt of the Waste, Norlite sampled and analyzed the material and discovered that the Waste had a PCB concentration of 2,006 parts per million (ppm). Norlite was not a TSCA-approved facility authorized to dispose of PCB-contaminated waste and notified BUR of its findings. BUR then

analyzed a sample of the Waste that it had retained, but again only found a trace of PCB contamination in the sample. Nevertheless, Norlite considered the waste to be highly contaminated with PCBs, sent the Waste back to BUR and notified the New York State Department of Environmental Conservation (NYDEC) of the PCB-contaminated waste shipment to its facility.

16. On April 3, 2008, the Waste returned to BUR's facility.

17. On or about April 4, 2008, CT DEP was notified by the NY DEC of BUR's shipment of the Waste to Norlite.

18. At some time between April 3, 2008 and April 11, 2008, BUR confirmed that the Waste was heavily contaminated with PCBs.

19. On April 9, 2008, CT DEP conducted a TSCA/PCB inspection of the OBBC site ("CT DEP Inspection").

20. On April 11, 2008, BUR shipped the Waste for disposal to Clean Harbors Deer Park, a TSCA-approved PCB disposal facility in Texas.

21. Based on information provided by BUR, the CT DEP Inspection and subsequent follow-up, Complainant has determined that Respondent has violated Section 15 of TSCA and the PCB Regulations as set forth below.

III. VIOLATIONS

COUNT 1 - Omissions and Inaccuracies on Waste Manifest

22. Complainant realleges and incorporates by reference Paragraphs 1-21.

23. Pursuant to 40 C.F.R. § 761.207(a), a generator of PCB waste who relinquishes control of that waste by transporting it or offering it for transport for off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22. For each bulk load of PCBs, the generator must specify on the manifest, among other things: the identity of the PCB waste; the earliest date of removal from service for disposal; and the weight in kilograms of the PCB waste.

24. At all times relevant to this Complaint, Respondent is a "generator," as defined in 40 C.F.R. § 761.3.

25. At all times relevant to this Complaint, the Waste is "PCB waste," as defined in 40 C.F.R. § 761.3.

26. As described in Paragraph 13 above, Respondent "relinquish[ed] control" over PCB waste by shipping it to Norlite.

27. As described in Paragraph 13 above, Respondent offered PCB waste to Norlite for "disposal," as defined in 40 C.F.R. § 761.3.

28. Accordingly, pursuant to 40 C.F.R. § 761.207(a), Respondent was required to properly prepare a hazardous waste manifest on EPA Form 8700-22 for the Waste it shipped to Norlite on April 2, 2008.

29. Manifest No. 000047996UIS (the manifest that BUR used to ship the Waste to Norlite on April 2, 2008), however, did not

identify the Waste as PCB waste, did not include the earliest date of removal from service for disposal, and did not list the weight of the Waste in kilograms.

30. Accordingly, Respondent's failure to comply with the PCB manifesting requirements for Manifest No. 000047996UIS, as described in Paragraph 29 above, constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA, 15 U.S.C. § 2604.

IV. PROPOSED CIVIL PENALTY

31. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation described above. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 and before January 13, 2009 are subject to penalties up to \$32,500 per day of violation. Violations that occur on or after January 13, 2009 are subject to penalties up to \$37,500 per day per violation. [73 Fed. Reg. 75340, December 11, 2008]

32. EPA has calculated a proposed penalty using the penalty assessment criteria of Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), by taking into consideration the nature, circumstances, extent, and gravity of the violations and, with respect to the Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue in business, any history of prior such violations, its degree of culpability, and

such other matters as justice may require.

33. In applying the penalty assessment criteria, EPA has used the approach outlined in EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy" (the "PCB Penalty Policy"), dated April 9, 1990, a copy of which is included with this Complaint. See EPA's "Notice of Availability of Polychlorinated Biphenyls Penalty Policy," 55 Fed. Reg. 13955 (April 13, 1990). A revised penalty matrix, inserted into the PCB Penalty Policy at page 9-B, takes into account inflation adjustments under the DCIA for violations occurring after March 15, 2004 and before January 13, 2009.

34. Thus, taking into account the particular facts and circumstances of this case, and in accordance with the requirements of the PCB Penalty Policy and the TSCA penalty factors described above, EPA proposes to assess Respondent a civil penalty of \$32,500 for its violation of Section 15 of TSCA and 40 C.F.R. Part 761, as set forth below:

Count 1: A penalty of \$32,500 is proposed for Respondent's omissions and inaccuracies on Manifest No. 000047996UIS. The violation is classified as a disposal violation, involving (1) a "major extent" of PCBs (19,334 kilograms), and (2) a "high range level one" assessment for the "circumstances" factor (appropriate for major manifesting errors). The resulting initial gravity-based amount from the revised matrix on page 9-B is \$32,500. No further adjustments are proposed to the base penalty.

35. The proposed penalty was developed based upon the best information available to EPA at this time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

36. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

37. In its Answer, Respondent may also: (1) dispute any material fact in this Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an

admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

38. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100, Mail Code: RAA
Boston, Massachusetts 02114-2023

39. Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to William D. Chin, the attorney assigned to represent EPA, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100, Mail Code: SEL
Boston, Massachusetts 02114-2023
Tel: (617) 918-1728

40. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found to be in default, which constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing. An order may

then be issued making Respondent liable for the full amount of any penalty proposed in this Complaint.

VI. SETTLEMENT CONFERENCE

41. Whether or not a hearing is requested upon the filing of an answer, Respondent may confer informally with EPA concerning the alleged violations and/or the amount of any penalty. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. Where appropriate, the amount of any penalty may be modified to reflect any settlement agreement reached at such a conference.

42. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact William Chin, Enforcement Counsel, at (617) 918-1728.

Susan Studlien
Susan Studlien
Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 03/18/09