

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh Martinez 6/6/18  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number TSCA 01-2018-0029

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

ACMT, Inc.  
369 Progress Drive  
Manchester, CT 06042

Total Dollar Amount of Receivable \$ 18,716.00 Due Date: 7/6/18

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND  
5 Post Office Square, Suite 100 (OES 04-3)  
Boston, MA 02109-3912

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ  
direct: (617) 918-1867

**BY HAND**

June 6, 2018

Wanda I. Santiago, Regional Hearing Clerk  
EPA Region 1 – New England  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, MA 02109-3912

Re: *In Re ACMT, Inc., Docket No. TSCA-01-2018-0029 – Simultaneous Filing of Complaint and Consent Agreement and Final Order*

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a signed Complaint as well as the original and one copy of an approved Consent Agreement and Final Order (CAFO) that, together, will initiate and resolve the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the Complaint, CAFO, and this cover letter were mailed to Respondent's counsel in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh W. Martinez".

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. EPA Region 1

Enclosures

cc: Randy P. Kabakoff, Esquire  
Rogin Nassau LLC, Attorneys for ACMT, Inc.

Marianne Milette, PCB Enforcement Coordinator  
EPA Region 1 – New England

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

**RECEIVED**

**JUN 06 2018**

EPA ORC US  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )

ACMT, Inc. )  
369 Progress Drive )  
Manchester, CT 06042, )

Respondent. )  
)

**Docket No.**  
**TSCA-01-2018-0029**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**CONSENT AGREEMENT**

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and in accordance with 40 C.F.R. § 22.18 of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules of Practice”).

**I. INTRODUCTION**

2. Complainant, the United States Environmental Protection Agency (“EPA”), Region 1, initiated this proceeding against Respondent, ACMT, Inc. (“Respondent”), by filing a Complaint and Notice of Opportunity for Hearing (“Complaint”), simultaneously with this CAFO.

3. The complete factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint and is incorporated herein by reference.

## **II. TERMS OF SETTLEMENT**

4. The provisions of this Consent Agreement and Final Order shall apply to and be binding on Respondent, its officers, directors, successors and assigns, until Respondent has completed all of the obligations required by this CAFO.

5. Respondent agrees that EPA has jurisdiction over the subject matter alleged in the Complaint, and hereby waives any defenses it might have as to jurisdiction and venue.

6. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding, and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

7. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

8. Without admitting or denying the facts and violations alleged in the Complaint, Respondent consents to the terms and issuance of this CAFO and consents, for the purposes of settlement, to the payment of the civil penalty as set out in this CAFO.

9. Respondent certifies that, to the best of its information and belief, it is presently in compliance with Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. Part 761.

10. After consideration of the nature of the violation alleged in the Complaint and other relevant factors, Complainant has determined that it is fair and proper that Respondent pays a civil penalty in the amount of \$18,716 in settlement of this matter.

### **Penalty Payment**

11. Respondent shall pay the total penalty amount of \$18,716 within 30 days of the

effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$18,716 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day.
- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of ACMT, Inc.*, Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (TSCA-01-2018-0029), shall be in the amount stated in Paragraph 10 above, and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**If remitted by any overnight commercial carrier:**

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

**If remitted on-line with a debit card, credit card, or bank account transfer:**

No user name, password, or account number is necessary for this option. On-line payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORC 04-6  
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-3  
Boston, MA 02109-3912

*Notice of payment may be given to Mr. Martinez via e-mail, at [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov).*

12. Interest, penalty and other charges for late payment. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the civil penalty if it is not paid within 30 calendar days of the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling

costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

13. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

Additional Provisions

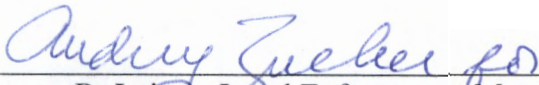
14. Compliance with this CAFO, including payment of any penalties, interest, or other charges, shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and does not waive, suspend, or modify the responsibility of the Respondent to comply with such laws and regulations.

15. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA for the specific violation alleged in this CAFO. Nothing in this CAFO shall prevent EPA from taking any necessary action to address conditions at Respondent's facility which may present an imminent and substantial endangerment to public health or the environment. Nor shall this CAFO be construed to, nor is it intended to operate in any way to, resolve any criminal liability or any other civil liability of Respondent.

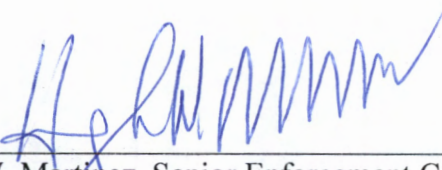
16. Each party shall bear its own costs and fees in this proceeding.

17. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

For Complainant, U.S. Environmental Protection Agency:

  
\_\_\_\_\_  
Joanna B. Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

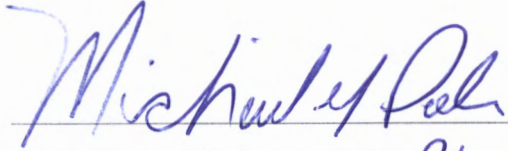
Date: 6-5-2018

  
\_\_\_\_\_  
Hugh W. Martinez, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Date: 5-31-18



For Respondent, ACMT, Inc.:



Date: 5-29-18

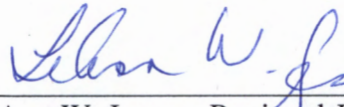
Print Name: Michael G. Polo

Title: President

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, ACMT, Inc., is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date it is filed with the Regional Hearing Clerk.

Date: 6/6/18

  
\_\_\_\_\_  
LeAnn W. Jensen, Regional Judicial Officer  
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

In the Matter of: )

ACMT, Inc. )  
369 Progress Drive )  
Manchester, CT 06042, )

Respondent. )

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

Docket No.  
TSCA-01-2018-0029

**COMPLAINT  
AND  
NOTICE OF OPPORTUNITY  
FOR HEARING**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued by Complainant, the U. S. Environmental Protection Agency (“EPA”), pursuant to 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 alleged violations 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," 40 C.F.R. Part 761 ("PCB Regulations"). The alleged violations involve the unauthorized use of PCBs in hydraulic equipment and the failure to properly prepare a hazardous waste manifest for PCB-containing waste. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

2. The Respondent in this action, ACMT, Inc. (“Respondent” or “ACMT”), is hereby notified of Complainant’s determination that ACMT has violated Section 15 of TSCA, 15

U.S.C. § 2614, and the PCB Regulations, including 40 C.F.R. Part 761, Subpart B [*Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items*, at 40 C.F.R. §§ 761.20 – 761.35] and Subpart K [*PCB Waste Disposal Records and Reports*, at 40 C.F.R. §§ 761.202 – 761.219]. Respondent is also hereby notified that Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides for the assessment of civil and/or criminal penalties for violations of TSCA Section 15.

**I. STATUTORY AND REGULATORY AUTHORITY**

3. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), requires EPA to promulgate regulations with respect to the disposal of PCBs.
4. The PCB Regulations at 40 C.F.R. Part 761 were promulgated pursuant to TSCA Section 6(e). 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).
5. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), states that it shall be unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.
6. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of TSCA Section 15.
7. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of TSCA Section 15 shall be liable to the United States for a civil penalty in

an amount not to exceed \$25,000 for each such violation.

8. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (“Debt Collection Improvement Act”), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), such TSCA violations that occur after December 6, 2013 are subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643 (November 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and the Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$38,892 for each such violation that occurs after November 2, 2015 with penalties assessed on or after January 15, 2018. Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (Jan. 10, 2018).

## **II. GENERAL ALLEGATIONS**

9. Respondent is a corporation incorporated under the laws of the State of Connecticut. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

10. Respondent owns and operates a facility located at 369 Progress Drive in Manchester, Connecticut (“Manchester Facility”). Respondent first operated at the Manchester Facility beginning in or around 1984.

11. Respondent produces sheet metal parts, rubber molding, and composites at the Manchester Facility. ACMT uses hydraulic presses as part of its regular business operation at the Manchester Facility.

12. Among the equipment Respondent employs at the Manchester Facility are two Farquhar hydraulic presses, identified by ACMT as Press #1 (nameplate # 3008) and Press #2 (nameplate #2908), each having a capacity of approximately 70 gallons of hydraulic fluid.

13. Respondent acquired the Farquhar Presses #1 and #2 (collectively, “the Presses”) as previously used equipment for its Manchester Facility, in or around 2002.

14. The Presses had originally been purchased new by Pratt & Whitney (East Hartford, CT), in or around 1968. At that time, the hydraulic fluid specified for the Presses, as new units, was “Pydraul F-9.” Pydraul F-9 is a Monsanto tradename for PCB hydraulic fluid.

15. On information and belief, at the time Respondent took possession of the Presses for the Manchester Facility in 2002, the Presses had been drained of hydraulic fluid so that each contained only residual fluid from the prior use. Before Respondent used the Presses, it filled them with “Houghton-Safe 419-R,” a non-PCB glycol based fire resistant hydraulic fluid. On information and belief, Respondent began using the Presses at the Manchester Facility in or around 2002.

16. The first time Respondent drained and replaced the hydraulic fluid from the Presses was in October 2015 when Respondent drained the used hydraulic fluid from the Presses using gravity. ACMT placed the used hydraulic fluid from the Presses into three 55-gallon capacity drums. Two of the drums were estimated to contain approximately 50 gallons each of such used hydraulic fluid and the third was estimated to contain about 22 gallons of the fluid.

17. On October 7, 2015, Respondent shipped the two drums that each contained approximately 50 gallons of the used hydraulic fluid removed from the Presses to Tradebe T&R Northeast in Meriden, Connecticut (“Tradebe”). The written documentation used for this October 7, 2015 shipment of two drums containing used hydraulic fluid from the Presses (the “Two Drums”) consisted of a non-hazardous waste manifest No. 1034671 (the “October 7, 2015 Manifest”).

18. After receiving the Two Drums from ACMT, Tradebe had the contents tested for PCBs. The laboratory analysis of samples taken from the Two Drums indicated that the used hydraulic fluid contained therein was contaminated with PCBs at a concentration of 25 parts per million (“ppm”) in one of the drums and 440 ppm in the other.

19. After receiving the analytical result of the samples taken from the Two Drums indicating 25 ppm and 440 ppm PCBs, respectively, on or about October 30, 2015, Tradebe remanifested the Two Drums as TSCA-regulated waste and shipped it off-site to Veolia ES Technical Solutions, in Flanders, New Jersey (“Veolia”), for storage or disposal.

20. ACMT’s October 7, 2015 Manifest (no. 1034671) was a non-hazardous waste manifest and did not identify any waste as PCB regulated, did not list the weight of the waste in kilograms, and did not indicate its storage for disposal date, all as required by the PCB Regulations, at 40 C.F.R. § 761.207.

21. On or about March 1, 2016, Respondent shipped the third drum containing some of the hydraulic fluid that had been removed from the Presses in October 2015 to Veolia for

storage or disposal. In light of the October 2015 sampling data obtained previously from the contents of the Two Drums, Respondent shipped the third drum using a Uniform Hazardous Waste Manifest (No. 015043458 JJK), dated March 1, 2016, on which the contents were identified as 89 kilograms of liquid PCB waste.

22. On August 5, 2016, after becoming aware of ACMT's issuance of the March 1, 2016 hazardous waste manifest (# 015043458 JJK), an inspector from the Connecticut Department of Energy and Environmental Protection ("CTDEEP") conducted an inspection, as a representative of EPA, at the Manchester Facility (the "2016 Inspection").

23. On May 23, 2017, CTDEEP conducted a second inspection, as a representative of EPA, at the Manchester Facility (the "2017 Inspection").

24. On August 4, 2017, EPA issued a subpoena to Respondent, identified as TSCA Subpoena No. PCB-01-07-0001 (the "Subpoena"), under Section 11(c) of TSCA, 15 U.S.C. § 2611(c). The Subpoena sought information necessary to further assess ACMT's compliance with the PCB Regulations at the Manchester Facility.

25. On or about August 17, 2017, Magdol Environmental Consulting, LLC submitted to EPA a written response to the Subpoena, on behalf of ACMT.

26. Based on information obtained from the Subpoena and during, or as a result of, the 2016 Inspection and the 2017 Inspection, Complainant has determined that Respondent violated Section 15 of TSCA and the PCB Regulations, as set forth below.



**III. VIOLATIONS**

**COUNT 1**

*Unauthorized Use of PCBs*

27. Complainant realleges and incorporates by reference Paragraphs 1 through 26.

28. Pursuant to 40 C.F.R. § 761.30(e), after July 1, 1984, PCBs may be used in hydraulic systems only at a concentration of less than 50 ppm.

29. From 2002 until 2015, Respondent used PCBs in one or more hydraulic system at the Manchester Facility at a concentration of 50 ppm or greater.

30. Accordingly, Respondent's use of PCBs in hydraulic system(s) at the Manchester Facility at a concentration of 50 ppm or greater, as described in the preceding Paragraph 29, above, constitutes a violation of 40 C.F.R. § 761.30(e) and Section 15 of TSCA for which penalties may be assessed pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a).

**COUNT 2**

*Failure to Prepare Hazardous Waste Manifest*

31. Complainant realleges and incorporates by reference Paragraphs 1 through 30.

32. Pursuant to 40 C.F.R. § 761.207(a), a generator who transports, or offers for transport, PCB waste for commercial off-site storage or disposal must prepare a hazardous waste manifest on EPA Form 8700-22. For each bulk load of PCBs, the generator shall specify on the manifest, among other things, the following information:

- a. the identity of the PCB waste;
- b. the earliest date of removal from service for disposal; and,
- c. the weight in kilograms of the PCB waste.

33. In accordance with 40 C.F.R. § 761.20(e)(2)(ii), concerning the testing of used oil, “. . . if any PCBs at a concentration of 50 ppm or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the [PCB] disposal requirements. . .” *See also* 40 C.F.R. § 761.1(b)(5) (general anti-dilution provision).

34. At all times relevant to the allegations of violation in this Complaint, the used hydraulic fluid that had been drained from the Presses in October 2015 was "PCB waste," as defined in 40 C.F.R. § 761.3.

35. With respect to the shipment of used hydraulic fluid on October 7, 2015 (manifest no. 1034671), Respondent was a "generator of PCB waste," as defined in 40 C.F.R. § 761.3.

36. As described in Paragraph 17, above, Respondent “transport[ed], or offer[ed] for transport” PCB waste by having it shipped off-site by Tradebe.

37. As described in Paragraph 17, above, Respondent offered PCB waste to the Tradebe for commercial off-site “disposal,” as defined in 40 C.F.R. § 761.3.

38. Accordingly, pursuant to 40 C.F.R. § 761.207(a), Respondent was required to properly prepare a hazardous waste manifest for the PCB waste it offered to Tradebe for transport or disposal, on October 7, 2015.

39. The manifest that Respondent used to offer the used hydraulic fluid in the Two Drums for transport or disposal by Tradebe on October 7, 2015 (*i.e.*, Manifest No. 1034671) was not a proper hazardous waste manifest because it did not:

- a. comply with the required manifest form (*e.g.*, EPA Form 8700-22);
- b. identify the Waste as PCB waste;
- c. list the weight of the Waste in kilograms; and,
- d. include the storage for disposal date.

40. Accordingly, Respondent's failure to comply with the PCB manifesting requirements for Manifest No. 1034671, as described in the preceding Paragraph 39, above, constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA for which penalties may be assessed pursuant to TSCA Section 16(a).

#### **IV. PROPOSED CIVIL PENALTY**

41. Section 16(a) of TSCA authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation of TSCA Section 15 described above. Pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3701 note, and the Penalty Inflation Rule at 40 C.F.R. Part 19, violations that occur after December 6, 2013 but before November 3, 2015 are subject to penalties up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643 (November 6, 2013); 83 Fed. Reg. 1190 (January 10, 2018).

42. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B). To assess a penalty for the violation alleged herein, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's April 9, 1990

"Polychlorinated Biphenyls (PCB) Penalty Policy" ("PCB Penalty Policy"), a copy of which is included with this Complaint. *See* 55 Fed. Reg. 13955 (Notice of Availability of Polychlorinated Biphenyls Penalty Policy, April 13, 1990). The PCB Penalty Policy, as well as EPA guidance regarding inflationary adjustments to penalties for violations occurring after December 6, 2013 and on or before November 2, 2015 [namely, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016), a copy of which is included with the Complaint], provide a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerative above to particular cases. *See* 81 Fed. Reg. 43091 (July 1, 2016); 83 Fed. Reg. 1190 (January 10, 2018).

43. By this Complaint, Complainant seeks to assess civil penalties of up to the statutory maximum per day per violation against Respondent for the following violations:

a. **COUNT 1 (Unauthorized Use)**: *One violation of 40 C.F.R. § 761.30(e) for using PCBs in hydraulic equipment at a level of 50 ppm or greater – Respondent's use of hydraulic fluid, between 2002 and October 2015, in at least one of two Farquhar presses (identified as Press #1 and Press #2) at the Manchester Facility at a concentration of 50 ppm PCBs or greater is considered a "Major Use" violation (non-disposal) under the PCB Penalty Policy. It is designated as a High Range, Level 2, Major Use violation (Minor Extent) that increased the likelihood of improper PCB disposal or release into the environment, increased the potential for harm from PCBs (e.g., in a fire), and decreased EPA's ability to determine compliance. As a continuing violation, EPA may calculate a separate penalty for each day of violation for any violations that fall within the general 5-year statute of limitations period for this kind of environmental noncompliance.*

b. **COUNT 2 (Manifesting)**: *One violation of 40 C.F.R. § 761.207(a) for failure to properly prepare a hazardous waste manifest for bulk PCB waste offered for storage or disposal – Respondent's failure to prepare a hazardous waste manifest for approximately 100 gallons of PCB waste offered for storage or*

disposal is considered a “Major Manifesting” violation (non-disposal) under the PCB Penalty Policy. It is designated as a High Range, Level 1, Major Manifesting violation (Minor Extent) that increased the likelihood of improper PCB disposal or release into the environment, increased the potential for harm from PCBs (e.g., in a fire), and decreased EPA’s ability to determine compliance.

44. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty amount for the violations alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. Complainant will calculate a proposed penalty based, in part, on its current knowledge of the Respondent’s financial condition. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues or defenses relevant to the appropriate amount of the penalty. Respondent shall pay the civil penalty with a cashier’s or certified check, payable to the “Treasurer, United States of America.” Respondent should note on the check the docket number of this Complaint (EPA Docket No. TSCA-01-2017-0029). The check shall be forwarded to:

U.S. Environmental Protection Agency  
Fines and Penalties  
P.O. Box 979077  
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, Massachusetts 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (OES 04-3)  
Boston, MA 02109-3912

*Notice of payment may be given to Mr. Martinez via e-mail, at [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov).*

45. Neither the assessment nor payment of an administrative penalty shall affect Respondents' continuing obligation to comply with all applicable requirements of federal law.

**V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

46. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated into a written Answer. **Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, Massachusetts 02109-3912

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (OES 04-3)  
Boston, MA 02109-3912

In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

47. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with this Complaint.

## **VI. DEFAULT ORDER**

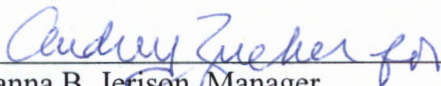
48. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to contest such factual allegations under Section 16(a)(2)(A) of TSCA.

Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

**VII. SETTLEMENT CONFERENCE**

49. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

50. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default but that the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, Respondent should contact Hugh W. Martinez, Senior Enforcement Counsel, at the address provided above, or by calling him at (617) 918-1867 (direct). Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.

  
Joanna B. Jerison, Manager  
Regulatory Legal Enforcement Office  
Office of Environmental Stewardship  
EPA Region 1 – New England

Date: 6-5-2018



CERTIFICATE OF SERVICE

I hereby certify that the foregoing, signed Consent Agreement and Final Order and accompanying administrative Complaint and Notice of Opportunity for Hearing have been provided to the following persons on the date noted below:

Originals and one copy  
of each, hand-delivered to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA – Region 1  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, Massachusetts 02109-3912

One copy of each, by First  
Class Mail, Return Receipt  
Requested, to the following  
recipient:

Randy P. Kabakoff, Esquire  
Rogin Nassau LLC  
Attorneys for ACMT, Inc.  
CityPlace I – 22<sup>nd</sup> Floor  
185 Asylum Street  
Hartford, CT 06103-3460



Hugh W. Martinez, Sr. Enforcement Counsel  
U.S. EPA Region 1  
5 Post Office Square, Suite 100 (OES 04-3)  
Boston, MA 02109-3912

Date: 6-6-18

Phone (dir.): (617) 918-1867  
Fax: (617) 918-0867  
e-mail: [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov)