

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Baal 9/25/14
Name of Case Attorney Date

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

Case Docket Number TSCA-01-2014-0002

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:

Connecticut Technical High School
System
15 Industrial Park Road
Middletown, CT 06457 1520

Total Dollar Amount of Receivable \$ 28,100 Due Date: 10/26/14

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ 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

5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

SEP 26 2014

EPA ORC *W*
Office of Regional Hearing Clerk

September 26, 2014

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

BY HAND

Re: *In re State of Connecticut Technical High School System*
Docket No. TSCA-01-2014-0002

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Kevin Kopetz, Esq.

RECEIVED

SEP 26 2014

EPA ORC 103
Office of P...

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:)
)
State of Connecticut Technical)
High School System)
)
15 Industrial Park Road)
Middletown, CT 06457-1520)
)
Respondent.)

Docket No. 1-TSCA-01-2014-0002

**CONSENT AGREEMENT
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), and the State of Connecticut Technical High School System ("Respondent") enter into this Consent Agreement and Final Order ("CAFO") by mutual consent.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Complainant and Respondent (the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

I. Statutory and Regulatory Basis

1. Under Section 16(a) 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, Complainant may assess civil penalties for 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" (the "PCB Regulations"), 40 C.F.R. Part 761.

2. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

3. 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).

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

5. Pursuant to 40 C.F.R. § 761.3, the PCB Regulations define "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance."

6. The requirements for the disposal of PCBs are set forth in 40 C.F.R. §§ 761.50 and 761.60.

II. General Allegations

7. Respondent is the State of Connecticut Technical High School System and is a "person," as defined by 40 C.F.R. § 761.3.

8. Respondent owns and operates the Emmett O'Brien Technical High School located at 141 Prindle Avenue, Ansonia, CT 06401 (the "Facility").

9. The State of Connecticut Department of Construction Services hired an environmental consulting firm, Environmental Services, Inc. ("ESI") to remove known abandoned fuel tanks and to investigate the presence of other abandoned tanks at the Facility.
10. On or about August 23, 2012, ESI excavated near the location of a former car wash at the Facility and found waste petroleum sludge in a dry well.
11. On or about August 24, 2012, the Connecticut Department of Energy and Environmental Protection ("CTDEEP"), Emergency Response Unit, responded to a reported incident from ESI regarding the release of an unknown petroleum product at the Facility.
12. Underneath the dry well, ESI discovered an underground storage tank at the Facility.
13. The underground storage tank at the Facility had not been used since approximately 1992.
14. On or about August 29, 2012, liquid waste oil was discovered in the underground storage tank at the Facility.
15. CTDEEP returned to the Facility on or about August 29, 2012 and August 30, 2012. CTDEEP conducted an inspection of the Facility to review Respondent's compliance with Section 6(e) of TSCA and 40 C.F.R. Part 761.
16. On or about August 29, 2012, ESI pumped out approximately 543 gallons of liquid waste oil from the underground storage tank at the Facility.
17. On or about August 29, 2012, ESI washed out the underground storage tank and added 170 gallons of wash water to the 543 gallons of waste oil for a total waste load of 713 gallons.

18. On or about August 29, 2012, ESI collected samples of the liquid waste from the underground storage tank at the Facility.

19. On or about August 31, 2012, Phoenix Environmental Laboratories performed an analysis of a sample of liquid taken from the underground storage tank at the Facility via the sonication extraction method, and the PCB concentration of the sample was found to be 52 parts per million ("ppm").

20. The PCB liquid waste taken from the underground storage tank at the Facility analyzed on August 31, 2012 was diluted because it included rinsate.

21. The 713 gallons of liquid PCB waste generated from pumping out and decontaminating the underground storage tank at the Facility were shipped for disposal on manifest number 009763567 JJK as PCB liquid.

III. Violations

COUNT I: Improper Disposal of PCBs

22. Complainant re-alleges paragraphs 1 through 21.

23. Pursuant to 40 C.F.R. § 761.50(a), any person storing or disposing of PCB waste must do so in accordance with 40 C.F.R. §§ 761.50 through 761.79.

24. Pursuant to 40 C.F.R. § 761.50(b), any person removing PCB liquids from use must dispose of them in accordance with 40 C.F.R. § 761.60(a).

25. Pursuant to 40 C.F.R. § 761.60(a), PCB liquids in concentrations equal to or greater than 50 ppm must be disposed of in an incinerator which complies with 40 C.F.R. § 761.70, except that PCB liquids at concentrations equal to or greater than 50 ppm and less than 500 ppm may be disposed of using other specified methods.

26. Liquid waste oil containing PCBs at a concentration greater than or equal to 50 ppm was abandoned in the underground storage tank at the Facility since approximately 1992.

27. From approximately 1992 until August 2012, Respondent did not properly dispose of the PCB liquids in the underground storage tank at the Facility, in accordance with the requirements of 40 C.F.R. § 761.60(a).

28. Accordingly, Respondent's failure to properly dispose of PCB liquids at a concentration equal to or greater than 50 ppm in the underground storage tank at the Facility violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a). Pursuant to TSCA § 16(a), each day a violation continues constitutes a separate violation.

IV. Terms of Settlement

29. Respondent certifies that it has corrected the alleged violations cited in this CAFO and that it is now operating the Facility in compliance with requirements of TSCA and 40 C.F.R. Part 761.

30. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

31. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

32. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

33. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

Penalty

34. 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 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 and on and before January 12, 2009 are subject to penalties up to \$32,500 per day of violation. Violations that occurred after January 12, 2009 are subject to penalties up to \$37,500 per day per violation.

35. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to 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. To assess a penalty for the alleged violations in this Complaint, Complainant took into account the particular facts and circumstances of this case with specific references to 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-C, takes into account inflation adjustments for violations occurring after January 12, 2009. The PCB Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

36. The PCB Penalty Policy states that a gravity-based penalty should be determined by considering the “extent” level and the “circumstance” level of a violation. The extent level of a violation takes into account that the quantity and concentration of PCBs involved in a violation affects the degree and likelihood of harm from the conduct or activity violating the PCB rules. The circumstance level of a violation reflects the probability of causing harm to human health or the environment.

37. Count I: Improper Disposal. For disposal violations, extent level penalties are calculated based on the approximate cost of cleanup and disposal of the materials contaminated by PCBs. These calculations are based on the kilograms or gallons of PCBs involved in the violation. For Count I, the applicable extent level is “Level A” for “Major Extent” because 543 gallons of PCB liquid waste was improperly disposed of at the Facility, which is in excess of 25 gallons. For Count I, the applicable circumstances level is “High—Level 1” for “Major Disposal” because PCBs were disposed of in the underground storage tank at the Facility in a manner not authorized by the PCB regulations. Once in the environment, PCBs do not readily break down and therefore may remain for long periods of time cycling between air, water, and soil. PCBs are a probable human carcinogen and have been demonstrated to cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system.

38. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents to the issuance of this CAFO and consents to the payment of a civil penalty of twenty-eight thousand one hundred dollars (\$28,100), which shall be due within 30 calendar days of the effective date of this CAFO.

39. Respondent shall make payment by certified or cashier's check, or check issued in the normal course of business operations, payable to the "Treasurer, United States of America," to the following address:

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

40. All such checks shall reference, "In the Matter of State of Connecticut Technical High School System, Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (TSCA-01-2014-0002). Copies of all such checks and letters forwarding the checks shall be sent simultaneously to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

and

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912
boal.maximilian@epa.gov

General Provisions

41. 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 and a charge to cover the cost of processing and handling a delinquent claim. In the event that the civil penalty is not

paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

42. 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.

43. Respondent shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Each Party shall bear its own costs, disbursements and attorneys' fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. Section 504, or other applicable law.

44. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, for the violations alleged in the Complaint, contingent on Respondent's full compliance with the terms of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

45. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in the CAFO shall be construed to limit the authority of the United States to

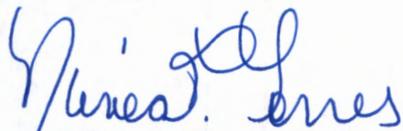
undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable provision of law.

46. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

47. This CAFO does not constitute a waiver, suspension, or modification of the requirements of TSCA, 15 U.S.C. § 2601 et seq., or any regulations promulgated thereunder.

48. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk.

For Respondent:



Name: Nivea Torres
Title: Superintendent
State of Connecticut Technical High School System

9/15/14
Date

For Complainant:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

9/24/14
Date

V. **FINAL ORDER**

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

Date: 9/25/14



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
State of Connecticut)	Docket No. TSCA-01-2014-0002
Technical High School System)	CERTIFICATE OF SERVICE
)	
)	
)	
Respondent.)	

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, Massachusetts 02109-3912
Copy (Certified Mail, Return Receipt Requested):	John Woodmansee, Environmental Health & Safety State of Connecticut Technical High School System 15 Industrial Park Road Middletown, CT 06457-1520
	Kevin Kopetz, Counsel State of Connecticut Department of Construction Services 165 Capitol Avenue Hartford, CT 06106
Dated: <u>9-26-2014</u>	 _____ Maximilian Boal Enforcement Counsel U.S. EPA, Region I 5 Post Office Square, Suite 100 (OES04-2) Boston, Massachusetts 02109-3912