

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

In the Matter of:)
)
University of Bridgeport)
126 Park Avenue)
Bridgeport, Connecticut)
)
Respondent)
)
Proceeding under Section 16(a))
of the Toxic Substances Control)
Act, 15 U.S.C. § 2615(a).)

Docket No.
TSCA-01-2009-0050

COMPLAINT

2009 AUG 27 P 1:57

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

I. STATUTORY AND REGULATORY BASIS

1. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") to the University of Bridgeport ("UB" or "Respondent") under Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, 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" (the "PCB Regulations"), 40 C.F.R. Part 761. The alleged violations involve the improper disposal of PCBs from two PCB Transformers, a failure to mark the storage areas for the transformers, and a failure to properly store the transformers for disposal. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to

request a formal hearing.

2. Complainant takes this action under the authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for violations of Section 15 of TSCA and 40 C.F.R. Part 761.

3. 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.

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 manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” See 40 C.F.R. § 761.1(a).

6. 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.” See 40 C.F.R. § 761.3.

7. Forty C.F.R. § 761.40 sets forth the requirements for marking the storage area for PCBs and PCB Items.

8. Forty C.F.R. §§ 761.50 and 761.60 set forth the requirements for the disposal of PCBs.

9. Forty C.F.R. § 761.65 sets forth the requirements for the storage for disposal of PCBs and PCB Items at concentrations of 50 parts per million (“ppm”) or greater.

II. GENERAL ALLEGATIONS

10. Respondent is a specially chartered, non-stock, not-for-profit corporation incorporated under the laws of the State of Connecticut.

11. Respondent owns and operates a private university with a main office located at 126 Park Avenue in Bridgeport, Connecticut.

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

13. Since at least January 1, 2000 to the present, Respondent has owned the following two facilities located on its campus: 221 University Avenue (a/k/a Milford Hall), and 85 Park Avenue.

14. Since at least June 8, 2005 to the present, Respondent has employed UNICCO Service Company, of Auburndale, Massachusetts to provide facilities (buildings and grounds and housekeeping) management and maintenance services for its campus facilities, including Milford Hall and 85 Park Avenue.

15. Sometime on or before May 28, 2008, a representative of UNICCO requested a representative of Air, Water and Soil Consultants, of Westerly, Rhode Island ("AWSC") to sample soil in the vicinity of two apparent transformer leaks located at Milford Hall and at 85 Park Avenue.

16. On May 28, 2008, AWSC conducted the bulk sampling of soil in the vicinity of the two apparent transformer leaks located at Milford Hall and at 85 Park Avenue.

17. On June 2, 2008, AWSC submitted the results of the bulk sampling of soil to UNICCO. The report from AWSC stated that samples of the soil collected from the vicinity of the two apparent transformer leaks at both Milford Hall and 85 Park Avenue were positive for PCBs. Analytical results from soil samples taken from the south sides of both the Milford Hall Transformer and the 85 Park Avenue Transformer showed PCB concentrations of 1.6

micrograms per kilogram (“mg/kg”) and 7.8 mg/kg respectively.

18. On June 17, 2008, AWSC notified the Connecticut Department of Environmental Protection (“CT DEP”) of two leaking transformers at Respondent’s campus.

19. On June 18, 2008, CT DEP conducted a compliance inspection at Respondent’s campus to determine Respondent’s compliance with TSCA and the PCB Regulations (the “June Inspection”).

20. At the time of the June Inspection, at least two General Electric cabinet-style transformers were located outdoors on Respondent’s campus: one was located at Milford Hall (the “Milford Hall Transformer”) and the other at 85 Park Avenue (the “Park Avenue Transformer”).

21. At the time of the June Inspection, only the Milford Hall Transformer was active and in use; the Park Avenue Transformer was inactive and had been taken out of service sometime prior to 2008. A representative of AWSC informed CT DEP that Respondent already had two new transformers ready to install in place of the Milford Hall Transformer and the Park Avenue Transformer.

22. At the time of the June Inspection, the Milford Hall Transformer was heavily stained with transformer oil. Transformer oil also stained the concrete pad on which the transformer was placed and the soil surrounding the pad.

23. At the time of the June Inspection, the Park Avenue Transformer was also stained with transformer oil.

24. At the time of the June Inspection, CT DEP collected two wipe samples: one from the concrete pad of the Milford Hall Transformer and another from the exterior of the Park

Avenue Transformer.

25. On June 25, 2008, analytical results indicated that the PCB concentration of the wipe sample from the Milford Hall Transformer's concrete pad was 5,530 micrograms per 100 centimeters squared ("ug/cm²") and the PCB concentration of the wipe sample from the Park Avenue Transformer was 383 ug/cm².

26. At some time on or shortly after June 25, 2008, CT DEP notified AWSC of the analytical results from the two wipe samples. AWSC informed CT DEP that Respondent had hired two other firms, HRP Associates and Clean Harbors, to remove and dispose of the Milford Hall Transformer and the Park Avenue Transformer and to clean up the PCB contamination.

27. On September 18, 2008, CT DEP met with David Losee, Respondent's attorney, and representatives from HRP Associates, Respondent's remediation consultant. At the meeting, CT DEP provided photos, sample results, and other information from the June Inspection. CT DEP also requested that Respondent and HRP Associates take samples of the oil from the Milford Hall Transformer and the Park Avenue Transformer in order to determine their PCB concentrations.

28. On September 26, 2008, CT DEP conducted a follow-up compliance inspection at Respondent's campus to determine Respondent's compliance with TSCA and the PCB Regulations (the "September Inspection").

29. At the time of the September Inspection, the Milford Hall Transformer was stained with transformer oil, but had been de-activated and moved from its concrete pad. The Milford Hall Transformer was stored outdoors on the ground nearby its former pad. The transformer was wrapped in poly-sheeting with several absorbent booms placed around the base.

A temporary chain link fence had also been placed around the transformer. It was raining at the time of the September inspection and runoff was visible underneath the poly-sheeting. A new transformer had been installed and placed on the same concrete pad where the Milford Hall Transformer had been previously located.

30. At the time of the September Inspection, the storage area for the Milford Hall Transformer was not marked with a M_L mark.

31. At the time of the September Inspection, the Park Avenue Transformer was stained and offline, but it remained outdoors on its concrete pad with temporary chain link fencing placed around it. There was no continuous curbing around the Park Avenue Transformer. A new transformer had been installed nearby on a new concrete pad.

32. At the time of the September Inspection, the storage area for the Park Avenue Transformer was not marked with a M_L mark.

33. At the time of the September Inspection, Respondent had not yet initiated any cleanup for the former concrete pad of the Milford Hall Transformer, the concrete pad of the Park Avenue Transformer or the soils surrounding the pads.

34. On September 26, 2008, but at some time after the September Inspection, Respondent received the test results of oil samples taken from the Milford Hall Transformer and the Park Avenue Transformer. The results indicated that the Milford Hall Transformer had a PCB concentration of 684 parts per million (“ppm”) and that the Park Avenue Transformer had a PCB concentration of 1,130 ppm.

35. On September 26, 2008, but at some time after the September Inspection, Respondent marked the storage areas for the Milford Hall Transformer and the Park Avenue

Transformer with a M_L mark.

36. On October 7, 2008, Respondent shipped the Milford Hall Transformer and the Park Avenue Transformer off-site for disposal via Clean Harbors.

37. On June 4, 2009, Complainant issued a TSCA Subpoena to Respondent (“Subpoena”) under the authority of Section 11(c) of TSCA, 15 U.S.C. § 2610(c).

38. On July 7, 2009, Respondent submitted its response to the TSCA Subpoena to Complainant (“Subpoena Response”).

39. At all relevant times to this Complaint, the Milford Hall Transformer and Park Avenue Transformer are “PCB Transformers” [or in the alternative, “PCB-Contaminated Electrical Equipment”¹], “PCB Articles,” “PCB Containers,” and “PCB Items,” as defined at 40 C.F.R. § 761.3.

40. Based on the June and September Inspections, the Subpoena Response, and other information provided by Respondent and CT DEP, Complainant has determined that Respondent has violated Section 15 of TSCA and the PCB Regulations as set forth below.

¹ Pursuant to 40 C.F.R. § 761.2(a)(2), any person must assume that mineral oil-filled electrical equipment (a) that was manufactured before July 2, 1979, (b) that contains three pounds or more of fluid, circuit breakers, reclosers, oil-filled cable, and rectifiers, and (c) whose PCB concentration is not established, is “PCB-Contaminated Electrical Equipment” (in other words, the equipment contains equal to or greater than 50 ppm of PCBs, but less than 500 ppm of PCBs). All pad-mounted transformers manufactured before July 2, 1979 must be assumed to be mineral oil-filled. If the date of manufacture of mineral oil-filled electrical equipment is unknown, any person must assume it to be “PCB-Contaminated.” Since the dates of manufacture of the Milford Hall Transformer and the Park Avenue Transformer are unknown, these transformers must be considered at least to be “PCB-Contaminated.”

III. VIOLATIONS

COUNT 1 – Improper Disposal of PCBs from the Milford Hall Transformer

41. Complainant realleges and incorporates by reference Paragraphs 1-40.

42. 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.

43. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of greater than or equal to 50 ppm constitute the disposal of PCBs.

44. Pursuant to 40 C.F.R. § 761.60(a), PCB liquid 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 liquid at concentrations equal to or greater than 50 ppm and less than 500 ppm may be disposed of using other specified methods.

45. As described above in Paragraph 22, at the time of the June Inspection, staining from leaked/spilled transformer oil was visible on the Milford Hall Transformer, its concrete pad and the soil surrounding the concrete pad. As described above in Paragraphs 29 and 33, at the time of the September Inspection, staining from leaked/spilled transformer oil was visible on the Milford Hall Transformer, and Respondent had not yet initiated a cleanup of the leaked/spilled transformer oil for the transformer's old concrete pad or the soil surrounding the pad.

46. As described above in Paragraph 34, the transformer oil from the Milford Hall Transformer contained a PCB concentration of 684 ppm.

47. At all times relevant to this Complaint, the leaked/spilled transformer oil from the Milford Hall Transformer was "PCB waste," as defined in 40 C.F.R. § 761.3.

48. As described above in Paragraphs 22 and 29, Respondent "disposed" of the PCBs

in the transformer oil in the Milford Hall Transformer by either spilling or making an uncontrolled discharge of PCBs at concentrations greater than 50 ppm, as defined in 40 C.F.R. § 761.50(a)(4).

49. At all times relevant to this Complaint, Respondent did not dispose of the leaked/spilled PCB transformer oil from the Milford Hall Transformer in accordance with the requirements of 40 C.F.R. § 761.60(a).

50. Accordingly, Respondent's failure to properly dispose of the leaked/spilled transformer oil from the Milford Hall Transformer violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

COUNT 2 – Improper Disposal of PCBs from the 85 Park Ave. Transformer

51. Complainant realleges and incorporates by reference Paragraphs 1-50.

52. 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.

53. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of greater-than or equal-to 50 ppm constitute the disposal of PCBs.

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

55. As described above in Paragraphs 23 and 31, at the time of the June and September Inspections, staining from leaked/spilled transformer oil was visible on the Park Avenue Transformer.

56. As described above in Paragraph 34, the transformer oil from the Park Avenue Transformer contained a PCB concentration of 1,130 ppm.

57. At all times relevant to this Complaint, the leaked/spilled transformer oil from the Park Avenue Transformer was "PCB waste," as defined in 40 C.F.R. § 761.3.

58. As described above in Paragraphs 23 and 31, Respondent "disposed" of the PCBs in the transformer oil in the Park Avenue Transformer by either spilling or making an uncontrolled discharge of PCBs at concentrations greater than 50 ppm, as defined in 40 C.F.R. § 761.50(a)(4).

59. At all times relevant to this Complaint, Respondent did not dispose of the leaked/spilled PCB transformer oil from the Park Avenue Transformer in accordance with the requirements of 40 C.F.R. § 761.60(a).

60. Accordingly, Respondent's failure to properly dispose of the leaked/spilled PCB transformer oil from the Park Avenue Transformer violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

COUNT 3 – Failure to Properly Store and Date the Milford Hall Transformer

61. Complainant realleges and incorporates by reference Paragraphs 1-60.

62. Pursuant to 40 C.F.R. § 761.40(a)(10), after July 1, 1978, each storage area used to store PCBs and PCB Items for disposal shall be marked with the M_L mark illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

63. At all times relevant to this Complaint, the Milford Hall Transformer was a "PCB Item" as defined in 40 C.F.R. § 761.3.

64. As described above in Paragraphs 21 and 29, Respondent removed the Milford

Hall Transformer from use and stored it for disposal sometime between the June Inspection and the September Inspection.

65. As described above in Paragraph 30, at the time of the September Inspection, the storage area for the Milford Hall Transformer was not marked with the M_L mark.

66. As described above in Paragraph 35, Respondent did not mark the storage area for the Milford Hall Transformer until September 26, 2008 (sometime after the September Inspection had taken place).

67. Accordingly, Respondent's failure to mark the area where the Milford Hall Transformer was stored with the M_L mark from the time the transformer was removed from service until September 26, 2008 violated Section 15 of TSCA and 40 C.F.R. § 761.40(a)(10).

68. 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. Forty C.F.R. § 761.50(c) specifies that any person who stores PCB waste for disposal must store it in accordance with 40 C.F.R. § 761.65.

69. Except as provided in 40 C.F.R. §§ 761.65(b)(2), (c)(1), (c)(7), (c)(9), and (c)(10), pursuant to 40 C.F.R. § 761.65(b), owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal must comply with certain storage requirements. Pursuant to 40 C.F.R. § 761.65(b)(1)(i), the facility used to store PCBs and PCB Items designated for disposal must have adequate roof and walls to prevent rain water from reaching the PCBs and PCB Items. Pursuant to 40 C.F.R. § 761.65(b)(1)(ii), the storage facility must also have an adequate floor that has continuous curbing with a minimum six inch high curb.

70. As described above in Paragraph 29, at the time of the September Inspection,

Respondent stored the Milford Hall Transformer for disposal in an outdoor location, covered in poly-sheeting with absorbent booms around its base, and surrounded by temporary chain link fencing. Runoff, however, was visible from underneath the poly-sheeting covering the transformer.

71. At the time of the September Inspection, Respondent did not store the Milford Hall Transformer for disposal in a facility with adequate roof and walls to prevent rain water from reaching the transformer or with an adequate floor that had continuous curbing with a minimum six inch high curb.

72. At the time of the September Inspection, the exceptions under 40 C.F.R. §§ 761.65(b)(2), (c)(1), (c)(7), (c)(9), and (c)(10) to the storage for disposal requirements of 40 C.F.R. § 761.65(b) did not apply to Respondent or the Milford Hall Transformer.

73. Accordingly, Respondent's failure to store the Milford Hall Transformer for disposal in a facility with adequate roof and walls to prevent rain water from reaching the transformer or with an adequate floor that had continuous curbing with a minimum six inch high curb from the time the transformer was removed from service until at least the September Inspection violated Section 15 of TSCA and 40 C.F.R. § 761.65(b).

74. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items must be dated on the item when they are removed from service for disposal.

75. At the time of the September Inspection, Respondent had not marked the Milford Hall Transformer with the date it was removed from service for disposal.

76. Accordingly, Respondent's failure to mark the Milford Hall Transformer with the date it was removed from service for disposal from the time the transformer was taken offline

until at least the September Inspection violated Section 15 of TSCA and 40 C.F.R.

§ 761.65(c)(8).

COUNT 4 – Failure to Properly Store and Date the Park Avenue Transformer

77. Complainant realleges and incorporates by reference Paragraphs 1-76.

78. Pursuant to 40 C.F.R. § 761.40(a)(10), after July 1, 1978, each storage area used to store PCBs and PCB Items for disposal shall be marked with the M_L mark illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

79. At all times relevant to this Complaint, the Park Avenue Transformer was a “PCB Item” as defined in 40 C.F.R. § 761.3.

80. As described above in Paragraph 21, Respondent removed the Park Avenue Transformer from use and stored it for disposal sometime prior to 2008.

81. As described above in Paragraph 32, at the time of the September inspection, the storage area for the Park Avenue Transformer was not marked with the M_L mark.

82. As described above in Paragraph 35, Respondent did not mark the storage area for the Park Avenue Transformer until September 26, 2008 (some time after the September Inspection had taken place).

83. Accordingly, Respondent’s failure to mark the area where the Park Avenue Transformer was stored with the M_L mark from the time the transformer was removed from service until September 26, 2008 violated Section 15 of TSCA and 40 C.F.R. § 761.40(a)(10).

84. 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. Forty C.F.R. § 761.50(c) specifies that any person who stores PCB waste for disposal must store it in accordance with 40

C.F.R. § 761.65.

85. Except as provided in 40 C.F.R. §§ 761.65(b)(2), (c)(1), (c)(7), (c)(9), and (c)(10), pursuant to 40 C.F.R. § 761.65(b), owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal must comply with certain storage requirements. Pursuant to 40 C.F.R. § 761.65(b)(1)(i), the facility used to store PCBs and PCB Items designated for disposal must have an adequate roof and walls to prevent rain water from reaching the PCBs and PCB Items. Pursuant to 40 C.F.R. § 761.65(b)(1)(ii), the storage facility must also have an adequate floor that has continuous curbing with a minimum six inch high curb.

86. As described above in Paragraph 20, at the time of the June Inspection, Respondent stored the Park Avenue Transformer for disposal outdoors on its concrete pad.

87. As described above in Paragraph 31, at the time of the September Inspection, Respondent stored the Park Avenue Transformer for disposal outdoors on its concrete pad, surrounded by temporary chain link fencing.

88. At the time of the June and the September Inspections, Respondent did not store the Park Avenue Transformer in a facility with adequate roof and walls to prevent rain water from reaching the transformer or with an adequate floor that had continuous curbing with a minimum six inch high curb.

89. At the time of the June and the September Inspections, the exceptions under 40 C.F.R. §§ 761.65(b)(2), (c)(1), (c)(7), (c)(9), and (c)(10) to the storage for disposal requirements of 40 C.F.R. § 761.65(b) did not apply to Respondent or the Park Avenue Transformer.

90. Accordingly, Respondent's failure to store the Park Avenue Transformer in a facility with adequate roof and walls to prevent rain water from reaching the transformer or with

an adequate floor that had continuous curbing with a minimum six inch high curb from the time the transformer was removed from service until at least the September Inspection violated Section 15 of TSCA and 40 C.F.R. § 761.65(b).

91. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items must be dated on the item when they are removed from service for disposal.

92. At the time of the September Inspection, Respondent had not marked the Park Avenue Transformer with the date it was removed from service for disposal.

93. Accordingly, Respondent's failure to mark the Park Avenue Transformer with the date it was removed from service from the time the transformer was taken offline until at least the September Inspection violated Section 15 of TSCA and 40 C.F.R. § 761.65(c)(8).

IV. PROPOSED CIVIL PENALTY

94. 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]

95. Complainant 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.

96. In applying the penalty assessment criteria, Complainant 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.

97. 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, Complainant proposes to assess Respondent a civil penalty of \$51,582 for its violations of Section 15 of TSCA and 40 C.F.R. Part 761, as set forth below:

98. Count 1: A penalty of \$21,922 is proposed for Respondent's improper disposal of PCB liquids from the Milford Hall Transformer. The violation is classified as a disposal violation, involving a "significant extent" of PCBs (120 square feet of soil/concrete) and a "high range level one" assessment for the "circumstances" factor (appropriate for significant uncontrolled discharges of PCBs). The resulting initial gravity-based amount from the revised matrix on page 9-B is \$21,922. No further adjustments are proposed to the base penalty.

99. Count 2: A penalty of \$21,922 is proposed for Respondent's improper disposal of PCB liquids from the Park Avenue Transformer. The violation is classified as a disposal violation, involving a "significant extent" of PCBs (150 square feet of soil/concrete) and a "high

range level one” assessment for the “circumstances” factor (appropriate for significant uncontrolled discharges of PCBs). The resulting initial gravity-based amount from the revised matrix on page 9-B is \$21,922. No further adjustments are proposed to the base penalty.

100. Count 3: A penalty of \$3,869 is proposed for Respondent’s failure to properly store and date the Milford Hall Transformer and to mark the storage area for the transformer. The violation is classified as a storage violation, involving a “minor extent” of PCBs (approximately 818 kilograms) and a “high range level two” assessment for the “circumstances” factor (appropriate where a significant portion of spilled material would not be contained in the event of an accident). The resulting initial gravity-based amount from the revised matrix on page 9-B is \$3,869. No further adjustments are proposed to the base penalty.

101. Count 4: A penalty of \$3,869 is proposed for Respondent’s failure to properly store and date the Park Avenue Transformer and to mark the storage area for the transformer. The violation is classified as a storage violation, involving a “minor extent” of PCBs (approximately 818 kilograms) and a “high range level two” assessment for the “circumstances” factor (appropriate where a significant portion of spilled material would not be contained in the event of an accident). The resulting initial gravity-based amount from the revised matrix on page 9-B is \$3,869. No further adjustments are proposed to the base penalty.

102. The proposed penalty was developed based upon the best information available to Complainant 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

103. 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.

104. 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.

105. 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:

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

106. 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:

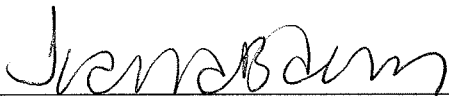
William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100, Mail Code: SEL
Boston, Massachusetts 02114-2023
Tel: 617-918-1728

107. 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

108. 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.

109. 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.

for 

Joel Blumstein
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

Aug. 26, 2009
Date