



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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June 16, 2009

Via Hand Delivery

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: Masonicare Corporation,
Docket No. TSCA-01-2009-0051

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
Enforcement Counsel

Enclosures

cc: Stephen B. McPherson

In the Matter of Masonicare Corporation,
Docket No. TSCA-01-2009-0051

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Complaint to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,
hand-delivered:

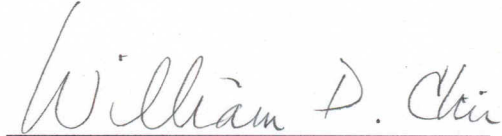
Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114

One copy, by Certified Mail,
Return Receipt Requested:

Stephen B. McPherson
President
Masonicare Corporation
22 Masonic Avenue
Wallingford, CT 06492

Dated: _____

6/16/09



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

In the Matter of:)
)
Masonicare Corporation)
22 Masonic Ave.)
Wallingford, CT 06492)
)
Respondent)
)
Proceeding under Section 16(a))
of the Toxic Substances Control)
Act, 15 U.S.C. § 2615(a).)

Docket No.
TSCA-01-2009-0051
COMPLAINT

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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 to Masonicare Corporation ("Masonicare" 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 those two PCB Transformers, and a failure to register the PCB Transformers with EPA. 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. § 761.30 sets forth the requirements for registering newly-identified PCB Transformers with EPA.
8. Forty C.F.R. § 761.40 sets forth the requirements for the marking of PCBs and PCB Items.
9. Forty C.F.R. §§ 761.50 and 761.60 set forth the requirements for the disposal of PCBs.

II. GENERAL ALLEGATIONS

10. Respondent is a corporation incorporated under the laws of the State of Connecticut.
11. Respondent owns and operates Masonicare Health Center, a private healthcare

facility, located at 22 Masonic Avenue, Wallingford, Connecticut (the "Facility").

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

13. Sometime in May 2008, a power outage occurred at the Facility that was traced to two electrical transformers: serial numbers 40438A01 ("Transformer A01") and 20518B01 ("Transformer B01"). Both transformers were discovered to be leaking at the time of the outage.

14. On May 23, 2008, Southern New England Electrical Testing ("SNEET") examined the transformers and noted oil leakage on the transformer pad and surrounding ground surface. SNEET also collected oil samples from the transformers and sent the samples to Weidmann Diagnostic Solutions of Bensalem, Pennsylvania ("WDS") for testing.

15. On June 2, 2008, the lab results from WDS were reported to Respondent. The results indicated that the oil from Transformer A01 had a PCB content of 1,630 parts per million ("ppm") and the oil from Transformer B01 had a PCB content of 114,000 ppm.

16. At all relevant times to this Complaint, Transformers A01 and B01 are "PCB Transformers," "Mineral Oil PCB Transformers," "PCB-Contaminated Electrical Equipment," "PCB Articles," "PCB Containers," and "PCB Items," as defined at 40 C.F.R. § 761.3.

17. At all times relevant to this Complaint, the leaked/spilled transformer oil from Transformers A01 and B01 was "PCB waste," as defined in 40 C.F.R. § 761.3.

18. On June 16, 2008, the Connecticut Department of Environmental Protection ("CT DEP") conducted a compliance inspection at the Facility to determine Respondent's compliance with TSCA and the PCB Regulations (the "June Inspection").

19. At the time of the June Inspection, at least two cabinet-style transformers,

Transformers A01 and B01, were online and located together outdoors behind the Ramage Building at the Facility.

20. At the time of the June Inspection, both Transformers A01 and B01 had significant oil staining around the base of each cabinet, on the transformers' pad, and on the ground surrounding the transformers.

21. At the time of the June Inspection, Transformers A01 and B01 were not labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

22. At the time of the June Inspection, the area around Transformers A01 and B01 was not cordoned off, the spill area was not contained, and cleanup of the PCBs had not yet been initiated.

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

24. At the time of the September Inspection, Transformers A01 and B01 were online and the base of each transformer, the transformers' pad, and the ground surrounding the transformers were stained with leaked/spilled oil.

25. At the time of the September Inspection, Transformers A01 and B01 were not labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

26. At the time of the September Inspection, the area around Transformers A01 and B01 was cordoned off, but the spill area was not contained and cleanup of the PCBs had not yet been initiated.

27. Based on the June Inspection, the September Inspection, and other information

provided by CT DEP and Respondent, Complainant has determined that Respondent has violated Section 15 of TSCA and the PCB Regulations as set forth below.

III. VIOLATIONS

COUNT 1 – Improper Disposal of PCBs from Transformers A01 and B01

28. Complainant incorporates by reference Paragraphs 1-27.
29. 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.
30. 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.
31. 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.
32. As described above in Paragraph 13, Respondent found Transformers A01 and B01 to be leaking at the time of the power outage at the Facility in May 2008.
33. As described above in Paragraph 14, on May 23, 2008, SNEET noted oil leakage on the transformer pad and surrounding ground surface when examining Transformers A01 and B01.
34. As described above in Paragraphs 20 and 24, staining from leaked/spilled transformer oil was visible on Transformers A01 and B01, the transformers' pad, and the ground surface surrounding the concrete pad at the time of the June and September Inspections.
35. As described above in Paragraph 15, the transformer oil from Transformer A01

contained a PCB concentration of 1,630 ppm.

36. As described above in Paragraph 15, the transformer oil from Transformer B01 contained a PCB concentration of 114,000 ppm.

37. As described above in Paragraphs 13, 14, 20, and 24, Respondent “disposed” of PCBs, as defined in 40 C.F.R. § 761.50(a)(4), by either spilling or making an uncontrolled discharge of the transformer oil in Transformers A01 and B01 at PCB concentrations equal to or greater than 50 ppm.

38. As described above in Paragraphs 13, 14, 20, and 24, Respondent did not dispose of the leaked/spilled PCB transformer oil from Transformers A01 and B01 in accordance with the requirements of 40 C.F.R. § 761.60(a).

39. Accordingly, Respondent’s failure to properly dispose of the leaked/spilled transformer oil from Transformers A01 and B01 from at least June 16, 2008 to at least September 26, 2008 violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

COUNT 2 – Failure to Properly Mark Transformer A01

40. Complainant incorporates by reference Paragraphs 1-39.

41. Pursuant to 40 C.F.R. § 761.30(a)(1)(xv), in the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs as provided in 40 C.F.R. § 761.2, is tested and found to be contaminated at 500 ppm or greater PCBs, it will be subject to all the requirements of 40 C.F.R. Part 761.

42. Pursuant to 40 C.F.R. § 761.40(a)(2), on or after July 1, 1978, PCB Transformers at the time of manufacture, distribution in commerce, or removal from use shall be labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

43. Pursuant to 40 C.F.R. § 761.40(c)(1), as of January 1, 1979, all PCB Transformers not marked under 40 C.F.R. § 761.40(a) shall be marked with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

44. As described above in Paragraphs 21 and 25, Transformer A01 was not labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) during either the June or September Inspections.

45. Accordingly, Respondent's failure to label Transformer A01 with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) from at least June 16, 2008 to at least September 28, 2008 violated Section 15 of TSCA and 40 C.F.R. §§ 761.40(a)(2) and (c)(1).

COUNT 3 – Failure to Properly Mark Transformer B01

46. Complainant incorporates by reference Paragraphs 1-45.

47. Pursuant to 40 C.F.R. § 761.30(a)(1)(xv), in the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs as provided in 40 C.F.R. § 761.2, is tested and found to be contaminated at 500 ppm or greater PCBs, it will be subject to all the requirements of 40 C.F.R. Part 761.

48. Pursuant to 40 C.F.R. § 761.40(a)(2), on or after July 1, 1978, PCB Transformers at the time of manufacture, distribution in commerce, or removal from use shall be labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

49. Pursuant to 40 C.F.R. § 761.40(c)(1), as of January 1, 1979, all PCB Transformers not marked under 40 C.F.R. § 761.40(a) shall be labeled with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a).

50. As described above in Paragraphs 21 and 25, Transformer B01 was not labeled

with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) during either the June or September Inspections.

51. Accordingly, Respondent's failure to label Transformer B01 with the M_L mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a) from at least June 16, 2008 to at least September 28, 2008 violated Section 15 of TSCA and 40 C.F.R. §§ 761.40(a)(2) and (c)(1).

COUNT 4 – Failure to Register Transformer A01

52. Complainant incorporates by reference Paragraphs 1-51.

53. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A), by no later than December 28, 1998, all owners of PCB Transformers must register them with EPA. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A)(1), a transformer owner who discovers after December 28, 1998 that a transformer is a PCB Transformer must register the transformer no later than 30 days after it is identified as such.

54. As described above in Paragraph 15, on or about June 2, 2008, Respondent received lab results that identified Transformer A01 as a "PCB Transformer," as defined in 40 C.F.R. § 761.3.

55. Respondent did not register Transformer A01 with EPA within 30 days after it was identified as a PCB Transformer.

56. Accordingly, Respondent's failure to register Transformer A01 with EPA within 30 days after it was identified as a PCB Transformer violated Section 15 of TSCA and 40 C.F.R. § 761.30(a)(1)(vi)(A)(1).

COUNT 5 – Failure to Register Transformer B01

57. Complainant incorporates by reference Paragraphs 1-56.

58. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A), by no later than December 28, 1998, all owners of PCB Transformers must register them with EPA. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A)(1), a transformer owner who discovers after December 28, 1998 that a transformer is a PCB Transformer must register the transformer no later than 30 days after it is identified as such.

59. As described above in Paragraph 15, on or about June 2, 2008, Respondent received lab results that identified Transformer B01 as a “PCB Transformer,” as defined in 40 C.F.R. § 761.3.

60. Respondent did not register Transformer B01 with EPA within 30 days after it was identified as a PCB Transformer.

61. Accordingly, Respondent’s failure to register Transformer B01 with EPA within 30 days after it was identified as a PCB Transformer violated Section 15 of TSCA and 40 C.F.R. § 761.30(a)(1)(vi)(A)(1).

IV. PROPOSED CIVIL PENALTY

62. 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 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]

63. 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 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.

64. 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.

65. 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 \$35,464 for its violations of Section 15 of TSCA and 40 C.F.R. Part 761, as set forth below:

66. Count 1: A penalty of \$21,922 is proposed for Respondent's improper disposal of PCB liquids from Transformers A01 and B01. The violation is classified as a disposal violation, involving a "significant extent" of PCBs (250 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 of the PCB Penalty Policy is \$21,922. No further adjustments are proposed to the base penalty.

67. Count 2: A penalty of \$3,869 is proposed for Respondent's failure to label Transformer A01 with the M_L mark illustrated in Figure 1 in 40 C.F.R. § 761.45(a). The violation is classified as a marking violation, involving a “minor extent” of PCBs (181 gallons) 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 of the PCB Penalty Policy is \$3,869. No further adjustments are proposed to the base penalty.

68. Count 3: A penalty of \$3,869 is proposed for Respondent's failure to label Transformer B01 with the M_L mark illustrated in Figure 1 in 40 C.F.R. § 761.45(a). The violation is classified as a marking violation, involving a “minor extent” of PCBs (181 gallons) 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 of the PCB Penalty Policy is \$3,869. No further adjustments are proposed to the base penalty.

69. Count 4: A penalty of \$2,902 is proposed for Respondent's failure to register Transformer A01 with EPA. The violation is classified as a use violation, involving a “minor extent” of PCBs (181 gallons) 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 of the PCB Penalty Policy is \$3,869. Complainant proposes a 25% reduction to the base

penalty for this count, reducing the penalty to \$2,902, for other factors as justice may require.

70. Count 5: A penalty of \$2,902 is proposed for Respondent's failure to register Transformer B01 with EPA. The violation is classified as a use violation, involving a "minor extent" of PCBs (181 gallons) 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 of the PCB Penalty Policy is \$3,869. Complainant proposes a 25% reduction to the base penalty for this count, reducing the penalty to \$2,902, for other factors as justice may require.

71. 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

72. 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.

73. 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.

74. 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

75. 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

76. 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

77. 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.

78. 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.

Sam Silverman, acting for
Susan Studlien
Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 6-11-09