



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

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2010 MAR 30 A 11:38

March 30, 2010

REGIONAL HEARING CLERK

**Via Hand Delivery**

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

RE: *In the Matter of: The Connecticut Light and Power Company*  
Docket No. TSCA-01-2010-0021

Dear Ms. Santiago:

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

Thank you for your assistance.

Sincerely,

William D. Chin  
Enforcement Counsel

Enclosures

cc: Jeffrey D. Butler

In the Matter of: The Connecticut Light and Power Company

Docket No. TSCA-01-2010-0021

**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,  
By Hand Delivery:

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

One copy, By Certified Mail,  
Return Receipt Requested:

Jeffrey D. Butler  
President and Chief Operating Officer  
The Connecticut Light and Power Company  
107 Selden Street  
Berlin, CT 06037

Dated: \_\_\_\_\_

3/30/10

William D. Chin

William D. Chin  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

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In the Matter of: )  
)  
The Connecticut Light and Power Company )  
107 Selden Street )  
Berlin, Connecticut 06037 )  
)  
Respondent )  
)  
Proceeding under Section 16(a) )  
of the Toxic Substances Control )  
Act, 15 U.S.C. § 2615(a). )

**Docket No.**  
**TSCA-01-2010-0021**  
**COMPLAINT**

**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 Connecticut Light and Power Company ("CL&P" 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 an alleged violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The alleged violation involves the improper disposal of PCBs from a PCB Transformer. 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. §§ 761.50 and 761.60 set forth the requirements for the disposal of PCBs.

## **II. GENERAL ALLEGATIONS**

8. Respondent is a corporation incorporated under the laws of the State of Connecticut with a principle place of business located at 107 Selden Street in Berlin, Connecticut.
9. At all times relevant to this Complaint, Respondent is a "person" as defined in 40 C.F.R. § 761.3.
10. At all times relevant to this Complaint, Respondent has owned and/or operated an electrical transformer located outdoors adjacent to a nursing home at 85 South Canaan Road in

North Canaan, Connecticut (the "Site").

11. On January 4, 2009, Respondent notified the Emergency Response Unit of the Connecticut Department of Environmental Protection ("CT DEP") of the release of approximately one quart of transformer oil from an electrical transformer ("Transformer H255212-68P") located at the Site (the "Release"). Respondent reported that the Release occurred sometime on January 3, 2009. Respondent also stated that it owned Transformer H255121-68P and that it assumed that the spilled/leaked transformer oil contained 50-500 parts per million ("ppm") of PCBs. In addition, Respondent reported that it had conducted an initial cleanup of the Release on January 3, 2009 (including washing the concrete transformer pad) and that it had removed Transformer H255121-68P and placed a new transformer onto the existing concrete transformer pad.

12. After removing Transformer H255121-68P, Respondent transported the transformer to its "work center" where it collected wipe samples of the transformer. Analytical results from the wipe samples, dated January 6, 2009, showed PCB concentrations ranging from 27-117 micrograms per 100 square centimeters (" $\mu\text{g}/100\text{ cm}^2$ ").

13. In addition, upon pumping out the remaining transformer oil from Transformer H255121-68P at the work center, Respondent determined that approximately 20 gallons of oil were missing from the transformer and assumed to have been leaked at the Site, and that the PCB concentration of the transformer oil was 766 ppm.

14. On January 6, 2009, Respondent provided updated information to the Emergency Response Unit of the CT DEP regarding the increase in the volume of oil released at the Site and the actual PCB concentration of the transformer oil in Transformer H255121-68P.

15. On or about January 28, 2009, Respondent returned to the Site to collect wipe samples from the concrete transformer pad and the surrounding soils. Analytical results from these wipe samples, dated January 28, 2009, demonstrated PCB concentrations ranging from 20-122  $\mu\text{g}/100\text{ cm}^2$  in the concrete transformer pad samples and 23-40 ppm in the soil samples.

16. On May 14, 2009, Respondent contacted the PCB program of CT DEP to update the state regarding the cleanup of the Release at the Site because additional PCB cleanup and sampling was necessary at the Site. Respondent also reported that the original concrete transformer pad and surrounding soils remained at the Site.

17. On May 15, 2009, the PCB Program of CT DEP conducted a compliance inspection at the Site to determine Respondent's compliance with TSCA and the PCB Regulations (the "May Inspection").

18. At the time of the May Inspection, there was no fencing, caution tape or signage anywhere in the area of the Release. CT DEP collected a soil composite from the soils at the perimeter of the concrete transformer pad. Analytical results from the soil composite showed a PCB concentration of 1.73 ppm.

19. On June 15, 2009, Respondent removed the new transformer from the concrete transformer pad in order to remove the pad as well as the PCB-contaminated soil surrounding the pad. Respondent then cleaned the new transformer, installed a new transformer pad and placed the new transformer onto the new pad.

20. Based on the May Inspection 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.

### **III. VIOLATIONS**

#### **COUNT 1 – Improper Disposal of PCBs from Transformer H255121-68P**

21. Complainant realleges and incorporates by reference Paragraphs 1-20.
22. 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.
23. 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.
24. Pursuant to 40 C.F.R. § 761.60(a), PCB liquid in concentrations equal to or greater than 50 ppm (“≥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.
25. At all times relevant to this Complaint, the transformer oil that spilled/leaked from Transformer H255121-68P at the Site on January 3, 2009, described above in Paragraphs 11-14, is “PCB Waste,” as defined at 40 C.F.R. § 761.3.
26. At all times relevant to this Complaint, the spill and/or leakage of the transformer oil from Transformer H255121-68P at the Site on January 3, 2009, described above in Paragraphs 11-14, constitutes the “disposal of PCBs.”
27. Accordingly, at all times relevant to this Complaint, Respondent was required to dispose of the spilled/leaked transformer oil from Transformer H255121-68P in accordance with 40 C.F.R. § 761.60(a).
28. From January 3, 2009 to at least June 15, 2009, Respondent did not dispose of the spilled/leaked transformer oil from Transformer H255121-68P in accordance with 40 C.F.R.

§ 761.60(a).

29. Forty C.F.R. Part 761, Subpart G (40 C.F.R. §§ 761.120-761.135) establishes criteria that EPA will use to determine the adequacy of the cleanup of spills of PCBs at concentrations  $\geq 50$  ppm that occur after May 4, 1987 (the “PCB Spill Cleanup Policy”). [See 40 C.F.R. § 761.120(a)]

30. Pursuant to 40 C.F.R. § 761.135(a), although a spill of PCBs  $\geq 50$  ppm is considered improper PCB disposal, a cleanup of PCB spills done in accordance with the PCB Spill Cleanup Policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. EPA, however, reserves the right to seek penalties where EPA believes that the responsible party has not made a good faith effort to comply with all of the provisions of the policy.

31. Pursuant to 40 C.F.R. § 761.125(c), cleanup of high-concentration PCB spills (i.e., spills with a PCB concentration  $\geq 500$  ppm) is considered complete if all of the requirements of 40 C.F.R. §§ 761.125(c)(1)-(5) are met.

32. Pursuant to 40 C.F.R. § 761.125(c)(1)(ii), the responsible party shall effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces of the spill plus a 3-foot buffer and place clearly visible signs advising persons to avoid the area.

33. Forty C.F.R. § 761.125(c)(4) sets forth the requirements for decontaminating PCB spills in nonrestricted access areas. Pursuant to 40 C.F.R. § 761.125(c)(4)(iv), low-contact, outdoor, nonimpervious solid surfaces must be either cleaned to  $10 \mu\text{g}/100 \text{ cm}^2$  or cleaned to  $100 \mu\text{g}/100 \text{ cm}^2$  and encapsulated. Pursuant to 40 C.F.R. § 761.125(c)(4)(v), soil contaminated by the PCB spill will be decontaminated to 10 ppm PCBs provided that the soil is excavated to a



minimum depth of 10 inches and replaced by clean soil (i.e., containing < 1 ppm PCBs), and the spill site is restored (e.g., replacement of turf).

34. At all times relevant to this Complaint, Respondent is the “responsible party” for the spill/leak of PCBs at the Site, as defined at 40 C.F.R. § 761.123.

35. At all times relevant to this Complaint, the PCBs in the transformer oil that spilled/leaked from Transformer H255121-68P, described above in Paragraphs 11-14, are “high-concentration PCBs,” as defined at 40 C.F.R. § 761.123.

36. At all times relevant to this Complaint, the area at the Site where Transformer H255121-68P was located is a “nonrestricted access area,” as defined at 40 C.F.R. § 761.123.

37. At all times relevant to this Complaint, the concrete transformer pad on which Transformer H255121-68P was located is a “nonimpervious solid surface,” as defined at 40 C.F.R. § 761.123.

38. As described above in Paragraph 18, at the time of May Inspection, Respondent had not effectively cordoned off or otherwise delineated and restricted an area encompassing any visible traces of the spill plus a 3-foot buffer and placed clearly visible signs advising persons to avoid the area.

39. As described above in Paragraphs 11-19, from January 3, 2009 to at least June 15, 2009, Respondent did not either clean the concrete transformer pad for Transformer H255121-68P to 10  $\mu\text{g}/100\text{ cm}^2$  or clean it to 100  $\mu\text{g}/100\text{ cm}^2$  and encapsulate it.

40. As described above in Paragraphs 11-19, from January 3, 2009 to at least June 15, 2009, Respondent did not decontaminate the soils surrounding the concrete transformer pad for Transformer H255121-68P to 10 ppm PCBs, excavate the contaminated soil to a minimum depth

of 10 inches, replace the contaminated soil with clean soil (i.e., containing < 1 ppm PCBs), and restore the Site (e.g., replacement of turf).

41. Thus, from January 3, 2009 to at least June 15, 2009, Respondent failed to comply with all of the requirements of the PCB Spill Cleanup Policy and is not entitled to a presumption against an enforcement action for penalties for its improper disposal of PCBs from January 3, 2009 to at least June 15, 2009.

42. Accordingly, Respondent's failure to properly dispose of the leaked/spilled transformer oil from Transformer H255121-68P from January 3, 2009 to at least June 15, 2009 violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

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

43. 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.

44. 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.

45. 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-C, takes into account inflation adjustments under the DCIA for violations occurring after January 12, 2009.

46. 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 \$24,080 for its violation of Section 15 of TSCA and 40 C.F.R. Part 761, as set forth below:

47. Count 1: A penalty of \$24,080 is proposed for Respondent's improper disposal of PCB liquids from Transformer H255121-68P. The violation is classified as a "major" disposal violation, involving a "significant extent" of PCBs (20 gallons of transformer oil) 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-C is \$24,080. No further adjustments are proposed to the base penalty.

48. 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**

49. 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.

50. 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.

51. 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 I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109-3912

52. 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  
5 Post Office Square - Suite 100  
Mail Code: OES04-4  
Boston, Massachusetts 02109-3912  
Tel: 617-918-1728

53. 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**

54. 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.

55. 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*   
\_\_\_\_\_  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

*3/26/10*  
\_\_\_\_\_  
Date