

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103-2029**

U.S. EPA  
Region III  
Philadelphia, PA 19103-2029

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IN THE MATTER OF: :  
: **ADMINISTRATIVE COMPLAINT**  
**Borough of Norristown** : **AND NOTICE OF RIGHT**  
**235 East Airy Street** : **TO REQUEST HEARING**  
**Norristown, Pennsylvania 19401** :  
: **Docket No. TSCA-03-2010-0130**  
**Respondent.** :  
: **Issued pursuant to the**  
**Municipal Building** : **Toxic Substances Control**  
**235 East Airy Street** : **Act ("TSCA") Sections 15 and 16,**  
**Norristown, Pennsylvania 19401** : **15 U.S.C. §§ 2614 and 2615**  
**Facility** :  
:

**ADMINISTRATIVE COMPLAINT**

This Administrative Complaint and Notice of Right to Request a Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, the regulations implementing TSCA Section 6(c), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, 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, a copy of which is enclosed with this Complaint. The Administrator of EPA has delegated this authority under TSCA to the Regional Administrators of EPA. This authority has been further delegated to the Director of the Land and Chemicals Division, U.S. EPA Region III, by EPA Delegation No. 12-2-A.

The Respondent in this action is the Borough of Norristown, Pennsylvania ("Respondent"). The Complaint alleges violations by Respondent of TSCA Sections 6(e) and

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15, 15 U.S.C. §§ 2605(e) and 2614, and the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, which occurred with regard to Respondent's facility, the Municipal Building located at 235 East Street, Norristown, Pennsylvania (the "Facility").

In support of its Complaint, Complainant alleges the following:

**I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

1. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to TSCA Sections 6(e), 15 and 16, 15 U.S.C. §§ 2605(e), 2614 and 2615, and Rules 22.1(a)(5) and 22.4(c) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.1(a)(5) and 22.4(c).
2. Respondent currently is and at the time of the violations alleged in this Complaint was a "person" within the meaning of that term as defined by 40 C.F.R. § 761.3.
3. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB" means 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 substances.
4. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB Transformer" means any transformer that contains PCBs at concentrations equal to, or greater than, 500 parts per million ("ppm").
5. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605.
6. On and after January 1, 1979 and at all times relevant to the violations alleged in this Complaint, Respondent owned and operated the Municipal Building, located at 235 East Street, Norristown, Pennsylvania (the "Facility").
7. Respondent's facility currently is and at the time of the violations alleged in this Complaint was a "Facility" within the meaning of 40 C.F.R. § 761.180(a).
8. Respondent operated and owned one PCB Transformer containing 308 gallons of PCB dielectric fluid which was located at the Facility at the time of the violations alleged in

this Complaint.

9. On September 26, 2007, EPA conducted a Compliance and Evaluation Inspection (“September 26, 2007 CEI”) of Respondent’s Facility.
10. At the time of the September 26, 2007 CEI Respondent had in use and in service one PCB Transformer located at the Facility. Respondent’s one PCB Transformer contained PCBs with a PCB concentration of equal to or greater than 500 ppm.
11. Respondent’s PCB Transformer referenced above was a “PCB Transformer” within the meaning of that term as defined by 40 C.F.R. § 761.3.
12. Respondent is not, and at the time of the violations alleged in this Complaint, was not a “commercial storer of PCB waste” within the meaning of that term as defined by 40 C.F.R. § 761.3.
13. Respondent is not, and at the time of the violations alleged in this Complaint, was not a “disposer of PCB waste” within the meaning of that term as defined by 40 C.F.R. § 761.3.

**COUNT I**

**(Failure to Mark PCB Transformer)**

14. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
  15. 40 C.F.R. § 761.40(a)(2) provides, in pertinent part, that owners and/or operators of PCB Transformers in existence on or after July 1, 1978 shall mark such PCB Transformers with the PCB Mark  $M_L$ , as illustrated in Figure 1 in Sec. 761.45(a), at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked.
  16. 40 C.F.R. § 761.40(c)(1) provides, in pertinent part, that as of January 1, 1979 all PCB Transformers not marked under 40 C.F.R. § 761.40(a)(2) shall be marked with the mark  $M_L$  as illustrated in 40 C.F.R. § 761.45.
  17. At the time of the September 26, 2007 CEI, Respondent’s PCB Transformer was not marked as required by 40 C.F.R. § 761.40(c)(1).
  18. Respondent’s failure to mark its one PCB Transformer with the mark  $M_L$  as referenced in
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40 C.F.R. § 761.40(c)(1) constitutes a violation of 40 C.F.R. § 761.40(c)(1) and Section 15 of TSCA, 15 U.S.C. § 2614.

## COUNT II

### **(Failure to Mark PCB Transformer Means of Access)**

19. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
20. 40 C.F.R. § 761.40(j)(1) provides, in pertinent part, that as of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer must be marked with the mark M<sub>L</sub> as referenced in 40 C.F.R. § 761.40(a).
21. 40 C.F.R. § 761.40(j)(2) provides, in pertinent part, that a mark other than the M<sub>L</sub> mark may be used provided all of the following conditions are met:
  - (i) The program using such an alternative mark was initiated prior to August 15, 1985, and can be substantiated with documentation.
  - (ii) Prior to August 15, 1985, coordination between the transformer owner and the primary fire department occurred, and the primary fire department knows, accepts, and recognizes what the alternative mark means, and that this can be substantiated with documentation.
  - (iii) The EPA Regional Administrator in the appropriate region is informed in writing of the use of the alternative mark by October 3, 1988 and is provided with documentation that the program began before August 15, 1985, and documentation that demonstrates that prior to that date the primary fire department knew, accepted and recognized the meaning of the mark, and included this information in firefighting training.
  - (iv) The Regional Administrator will either approve or disapprove in writing the use of an alternative mark within 30 days of receipt of the documentation of a program.
22. 40 C.F.R. § 761.40(j)(3) provides that any mark placed in accordance with the requirements of 40 C.F.R. § 761.40(j) must be placed in the locations described in 40 C.F.R. § 761.40(j)(1) in a manner that can be easily read by emergency response

- personnel fighting a fire involving this equipment.
23. At the time of the September 26, 2007 CEI Respondent's Transformer Vault housed Respondent's PCB Transformer. The Vault door providing means of access to Respondent's Transformer at the Facility was not marked as required by 40 C.F.R. § 761.40(j)(1) in a manner that could be easily read by emergency response personnel, as required by C.F.R. § 761.40(j)(3).
  24. At the time of the September 26, 2007 CEI Respondent did not meet the conditions necessary to satisfy the exceptions listed at 40 C.F.R. § 761.40(j)(2).
  25. Respondent's failure to mark its PCB Transformer's Vault door, which provides means of access to its PCB Transformer, as referenced in 40 C.F.R. § 761.40(a), in a manner that could be easily read by emergency response personnel, in accordance with 40 C.F.R. § 761.40(j)(3), or comply with the exceptions set forth at 40 C.F.R. § 761.40(j)(2), constitutes a violation of 40 C.F.R. § 761.40(j) and Section 15 of TSCA, 15 U.S.C. § 2614.

### **COUNT III**

#### **(Combustible Materials Storage)**

26. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
  27. 40 C.F.R. § 761.30(a)(1)(viii) provides, in pertinent part, that combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB Transformer enclosure (i.e., in a transformer vault or in a partitioned area housing a transformer); within 5 meters of a transformer enclosure, or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer.
  28. At the time of the September 26, 2007 CEI conducted at Respondent's Facility, Respondent stored combustible materials within Respondent's Transformer Vault, housing Respondent's PCB Transformer.
  29. Respondent's storage of combustible materials within Respondent's Transformer Vault, housing Respondent's PCB Transformer, is a violation of 40 C.F.R. § 761.30(a)(1)(viii)
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and Section 15 of TSCA, 15 U.S.C. § 2614.

**COUNT IV - XV**

**(Failure to Prepare and Maintain PCB Transformer Quarterly Inspection Reports)**

30. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
31. 40 C.F.R. § 761.30(a)(1)(ix) provides, in pertinent part, that a visual inspection of each PCB Transformer in use or stored for reuse shall be performed at least once every three months, as described in that regulation.
32. 40 C.F.R. § 761.30(a)(1)(xii) provides, in pertinent part, that records of such inspections and the maintenance history of each PCB Transformer shall be maintained at least 3 years after disposing of such PCB Transformer and shall be made available for inspection, upon request by EPA. Such records must contain the following information for each PCB Transformer:
  - (A) Its location.
  - (B) The date of each visual inspection and the date that the leak was discovered, if different from the inspection date.
  - (C) The person performing the inspection.
  - (D) The location of any leak(s).
  - (E) An estimate of the amount of dielectric fluid released from any leak.
  - (F) The date of any cleanup, containment, repair, or replacement.
  - (G) A description of any cleanup, containment, or repair performed.
  - (H) The results of any containment and daily inspection required for uncorrected active leaks.
  - (I) Record of the registration of PCB Transformer(s).
  - (J) Records of transfer of ownership in compliance with 40 C.F.R. § 761.180(a)(2)(ix).
33. Respondent failed to prepare and maintain complete quarterly visual inspection reports regarding the PCB Transformer, in use at the Facility, during calendar years of 2006, 2005 and 2004 representing twelve (12) quarters.
34. Respondent's failure to prepare and maintain complete quarterly visual inspection reports regarding its PCB Transformers during calendar years of 2006, 2005 and 2004

representing twelve (12) quarters constitutes twelve separate violations 40 C.F.R. § 761.30(a)(1)(xii) and Section 15 of TSCA, 15 U.S.C. § 2614.

**COUNT XVI - XVIII**

**(Failure to Develop and Maintain Annual Document Logs)**

35. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
  36. 40 C.F.R. § 761.180(a) provides in pertinent part, with exceptions not pertinent here, that regarding PCBs and PCB Items in service or projected for disposal, beginning February 5, 1990, each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time one or more PCB Transformers shall develop and maintain at the facility, or a central facility provided they are maintained at that facility, annual records and the written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared for the facility by July 1 covering the previous calendar year (January through December). The annual document log shall be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed in 40 C.F.R. § 761.180(a). Annual records (manifests and certificates of disposal) shall be maintained for the same period. The annual records and the annual document log shall be available for inspection by authorized representatives of EPA at the facility where the annual records and the annual document log(s) are maintained during normal business hours, and each owner or operator of a facility subject to these requirements shall know the location of these records.
  37. Respondent did use or store its PCB Transformer at the Facility in calendar years 2006, 2005 and 2004. Respondent did not develop and maintain annual document logs regarding the disposition of PCBs and PCB Items, including its PCB Transformer, at the Facility for the calendar years 2006, 2005, and 2004.
  38. Respondent's failure to develop and maintain annual document logs regarding its PCBs Transformer for calendar years 2006, 2005 and 2004 as required by 40 C.F.R.
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§ 761.180(a)(1), constitutes three (3) separate violations of 40 C.F.R. § 761.180(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

### **CIVIL PENALTY**

TSCA Section 16(a)(1) and (2), 15 U.S.C. § 2615(a)(1) and (2), authorize the Administrator of EPA to assess by order a civil penalty in an amount of up to \$25,000.00 for each violation of TSCA Section 15, 15 U.S.C. § 2614. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised at 69 Fed. Reg. 7121 (February 13, 2004), violations occurring after January 30, 1997 and on or before March 15, 2004 are subject to an increased statutory maximum penalty of \$27,500 per violation (adjusted upwards by 10%). For violations occurring after March 15, 2004 and on or before January 12, 2009, the statutory maximum penalties have been raised to \$32,500 per violation. For violations occurring after January 12, 2009, the statutory maximum penalties have been raised to \$37,500 per violation

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

To develop the civil penalty the Complainant must take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in TSCA Section 16, 15 U.S.C. § 2615, and EPA's April 9, 1990 *Polychlorinated Biphenyls (PCB) Penalty Policy* ("PCB Penalty Policy"), a copy of which is enclosed with this Complaint. The PCB Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. Such civil penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

Within thirty (30) days of receipt of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact, conclusion of law and/or the appropriateness of any penalty amount proposed to be assessed for \_\_\_\_\_

the violations alleged in this Complaint. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to request a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules of Practice. Hearings will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice.

Respondent's Answer and all other documents that Respondent files in this action should be sent to:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

In addition, a copy should be sent to Mr. Rodney Travis Carter, Esq., the attorney assigned to represent EPA in this matter, at the following address:

Rodney Travis Carter (3RC30)  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

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### **SETTLEMENT CONFERENCE**

EPA encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed penalty.

In the event a settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. HOWEVER, SETTLEMENT CONFERENCES SHALL NOT AFFECT THE REQUIREMENT TO FILE A TIMELY ANSWER TO THE COMPLAINT.

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. *See* 40 C.F.R. § 22.18(a).

If you wish to arrange a settlement conference, please contact Mr. Rodney T. Carter, Esq., Senior Assistant Regional Counsel, at (215) 814-2478 prior to the expiration of the thirty (30) day period following receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

### **SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

The following EPA offices and the staffs thereof are designated as the trial staff to represent the Agency as a party in this case: the U.S. EPA Region III Office of Regional Counsel, the U.S. EPA Region III Waste and Chemicals Management Division, the Office of the Assistant Administrator for Prevention, Pesticides and Toxic Substances, and the Office of the Assistant Administrator for Enforcement and Compliance Assurance. From the date of the issuance of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, nor any person who is likely to advise these officials, may have an ex parte communication with the trial staff on the merits of any issue involved in this proceeding. Please

be advised that the Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or Regional Judicial Officer after issuance of a Complaint.

6/28/10  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division  
US EPA Region III

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on the date provided below, I caused the original and one true and correct copy of the foregoing Administrative Complaint and Notice of Right to Hearing, to be hand delivered to and filed with the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, and that I caused a true and correct copy of the Administrative Complaint and its enclosures to be served via express mail, return receipt requested, upon the following persons:

JUN 29 2010  
PHILA. PA

Councilwoman Mila Hayes  
1st District Councilwoman  
Council President  
235 East Airy Street  
Norristown, Pennsylvania 19401

Linda Christian, *3rd District Councilwoman*  
*Chair - Public Safety Committee*  
*(Building and Code Enforcement Depts.)*235  
East Airy Street  
Norristown, Pennsylvania 19401

David Forrest, *Municipal Administrator*  
235 East Airy Street  
Norristown, Pennsylvania 19401

Todd Eienberg Esq.  
101 Greenwood Ave.  
Jenkinstown, PA 19046

JUN 29 2010

\_\_\_\_\_  
Date



Rodney Travis Carter  
Senior Assistant Regional Counsel  
U.S. EPA - Region III  
Counsel for Complainant