

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	
Nicor Gas,)	DOCKET NO. TSCA-HQ-2015-5017
)	
Respondent.)	

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Comes now the United States Environmental Protection Agency (EPA or Complainant) in response to the Prehearing Order issued in this matter, respectfully submits Initial Prehearing Exchange, stating as follows:

1. (A) WITNESSES INTENDED TO BE CALLED

Tony (Henry) Baney: Mr. Baney will testify as a fact witness. Mr. Baney is a Compliance Officer for the EPA Headquarters. He has worked at the Agency since 1983 in the RCRA Enforcement Division, the Office of Pollution Prevention and Toxics (OPPT) and the National Program Chemical Division and in the Office of Civil Enforcement. In his role in OPPT, Mr. Baney worked on the development and approval of equipment and products management requirements for the federal PCB program under the Toxic Substances Control Act (TSCA).

He will testify as to his work experience in EPA's Office of Civil Enforcement, Waste and Chemical Enforcement Division. His duties include serving as a compliance officer in the investigation of 40 CFR Part 161, Polychlorinated biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, under the Toxic Substances Control Act (TSCA).

He will testify as to his review of the evidence compiled as a result of EPA's

regulatory oversight of Nicor's natural gas operations in Illinois in addition to his determination that Respondent is in violation of the TSCA and the regulations promulgated thereunder. He will testify as to how the penalty proposed in the referenced complaint (exhibit A), detailing the penalty and how it was calculated applying the statutory penalty factors set forth within Section 6(e) of TSCA, 15 U.S.C. § 2605(e), as explained in EPA's Polychlorinated Biphenyls (PCB) Penalty Policy, April 9, 1990.

He will offer his opinion regarding the appropriateness of the penalty proposed in the Compliant, considering the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent: a) its ability to pay, b) the effect on its ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require. Mr. Baney may testify further as to what the company would need to do in order to come into compliance with the applicable TSCA PCB regulations.

Peter Ramanauskas: Mr. Ramanauskas will testify as a fact witness. Mr. Ramanauskas has a MS in Environmental Engineering and a BS in chemical Engineering from Illinois Institute of Technology. Mr. Ramanauskas works at EPA Region 5 and serves as an Environmental Engineer/RCRA Corrective Action Project Manager/ Regional PCB Coordinator. He will testify that as an EPA project manager during the Nicor investigation he attended meetings that were conducted with Nicor and enforcement risk and cleanup discussions.

Kendall Moore: Mr. Moore will testify as a fact witness. Mr. Moore works at the US EPA Region 5 Pesticides and Toxics Compliance Section. He has a Bachelor of Science in Biology and minor in Chemistry from Chicago State University. Mr. Moore will indicate that he obtained consent forms from homeowners, conducted inspections,

home visits and collected split samples associated with the Nicor investigation.

Dr. Michelle Watters, MD, Ph.D., MPH: Dr. Waters will testify as an expert witness.

Dr. Watters has a degree as a medical doctor in occupational medicine from University of Illinois, College of Medicine, Chicago, IL, a Master in Public Health From the University of Illinois, School of Public Health, Chicago, IL, a Master of Science in Biology from University of Michigan, a Master of Science in computer science from the Loyola university and a PhD in Civil Engineering with sub-specialty in environmental engineering from Northwestern University, Evanston, IL.

Dr. Watters is employed as a Medical Officer for the Agency for Toxic Substances and Disease Registry (ATSDR), Division of Community Health Investigation and is the acting Western Branch Associate Director of Science. As a medical officer, Dr. Watter provides expertise in areas relating to exposures in occupational and environmental medicine.

Dr. Watters will testify to the health concerns associated with polychlorinated biphenyls (PCBs). She may also testify as to how the exposure to PCBs can come from many locations such as exposure to PCB contaminated buildings such as residences, schools, churches and other buildings. In addition, exposure can come from consuming PCB contaminated seafood. Such exposure can lead to an increased risk of normal cells transformation into cancer cells. Her testimony may also cover secondary exposure relating to inhalation of the PCBs and transformation from PCBS to other compounds (dioxins and furans) through a process of heating and volatilization. Dr. Watters is preparing an expert report which will be included as a supplement to the prehearing exchange.

Anton (Tony) Martig: Mr. Martig will testify as a fact witness. Mr. Martig is a section chief in US EPA's Region 5 offices. He will authenticate evidence and testify to a

June 13, 2007 conversation and with staff Nicor regarding their discovery of PCBs in Nicor's natural gas pipeline distribution system. (Exhibit 19)

Margaret Guerriero: Ms. Guerriero will testify as a fact witness. Ms. Guerriero is a Director in US EPA's Region 5 offices. She will authenticate and testify to the Subpoena EPA sent to Nicor on July 13, 2007/

Mardi Klevs: Ms. Klevs will testify as a fact witness. Ms. Klevs is a branch chief in US EPA's Region 5 offices. She will authenticate and testify concerning subpoena responses received from Nicor during 2007.

Matthew J. Dunn: Mr. Dunn will testify as a fact witness. Mr. Dunn's title is Assistant Attorney General with the Office of the Illinois Attorney General. He will authenticate evidence relating to information Nicor provided regarding an information request the Attorney General's office sent to Nicor.

Jennifer Van Wie: Ms. Van Wie will testify as a fact witness. Ms. Van Wie's title is Assistant Attorney General with the Office of the Illinois Attorney General. She will authenticate evidence.

1. (B) DOCUMENTS AND EXHIBITS INTENDED TO BE INTRODUCED

Copies of documents and exhibits that Complainant intends to introduce into evidence at the hearing are herein submitted electronically using the OALJ E-Filing System. Documents with business confidentiality claims have been submitted pursuant to 40 CFR 22.5(d)(2).

CX 1	40 CFR 761.30 Authorizations
CX 2	Disposal of Polychlorinated Biphenyls (PCBs) Final Rule, 63 FR 353384 (June 29, 1998)
CX 3	Technical and Procedural Amendments to TSCA Regulations - Disposal of Polychlorinated Biphenyls, (PCBs), 64 Fed. Reg. 33755 (June 24, 1999)
CX 4	Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, use Prohibitions; Exclusions, Exemptions and Use Authorizations 49 FR 28172 (1984)

CX 5	September 2001 Version Revisions to the PCB Q and A Manual (September 2001)
CX 6	Polychlorinated Biphenyls, (PCBs) Penalty Policy (1992)
CX 7	Nicor Gas PCB Sampling Park Ridge, IL (Other Locations with PCBs >= 50 PPM)
CX 8	Nicor Gas PCB Sampling Park Ridge, IL (Characterization of Locations with PCBs >= 50 PPM)
CX 9	Nicor Gas PCB Sampling Park Ridge, IL (Original 4 Homes with PCBs >= 50 PPM)
CX 10	Nicor Gas PCBs \geq 50ppm (or equivalent) in Liquid Sampling -- Park Ridge, IL (2007-2012)
CX10A	Nicor Gas PCB Sampling Illinois
CX 11	Record of Communication, Tony Martig (EPA), dated June 13, 2007
CX12	Subject: EPA/Nicor draft agenda cc: Kendall Moore and John Woodward (June 18, 2007)
CX13	Letter to Matthew Dunn from Schiff Hardin, RE: Request for information Regarding Pipeline Liquids (July 19, 2007)
CX14	Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation (November 20, 2007)
CX15	Email from Michael Partee, Nicor (January 11, 2008)
CX16	RESERVED
CX 17	Hand written note and cover memo from STAT Analysis Corporation to SET Environmental 450 Sumac Road re: Nicor Gas 1844 Ferry Road (Data is about: 1440 Talcott St)
CX 18	RESERVED
CX 19	RESERVED
CX 20	Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)
CX 21	Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024 PR, NICOR 200 S. Lincoln, Park Ridge (August 10, 2007)
CX 22	Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)
CX 23	Cover Memo from STAT Analysis Corporation to SET Environmental 707024-PR NICOR, 207 S. Lincoln, Park Ridge, IL (August 7, 2007)
CX 24	Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)
CX 25	Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024-PR, NICOR 1500 Stewart, Park Ridge, IL (August 7, 2007)

CX 26	Cover Memo from Mayer Brown re: Park Ridge PCB Investigation to Mr. Mony Chabria, Ms. Jennifer Tomas (September 4, 2007)
CX 27	Email to James Jerozal from Peter Ramanauskas RE: Annual Sampling (September 4, 2008)
CX 28	July 13, 2007, Administrative subpoena to Nicor, pursuant to Section II(c) of TSCA (15 U.S.C. § 2610(c)), regarding Nicor's natural gas pipeline distribution system servicing Park Ridge,
CX 29	Nicor's initial response (received on July 20, 2007.)
CX 30	Nicor followed-up with information on July 27, 2007.
31-39	RESERVED
CX 40	Penalty Calculation/Narrative: US EPA Penalty Narrative and Calculation and Penalty Worksheet for Nicor Gas Matter TSCA-HQ-2015-0517
CX 41	Ability to pay determination package for Nicor, ALG and Southern Company Gas
CX 42	RESERVED
CX 43	Letter from Mark Ter Molen to Mony Chabria Re: Park Ridge PCB Investigation (September 19, 2007)
CX 44	RESERVED
CX 45	Email from Mark R. Ter Molen to Mark Chalfant Subject: Nicor Gas PCB Issue (September 9, 2012)
CX 46	RESERVED
CX 47	RESERVED
CX 48	Nicor, STANDARD PRACTICE OPERATING – 9 (April 1, 2009)
CX 49	Nicor, STANDARD PRACTICE OPERATING – 9 (December 31, 2004)
CX 50	Nicor Gas PCB Discussion from Mayer Brown, (April 19, 2013)
CX 51	Nicor PCB Issues from Mayer Brown (November 12, 2012)
CX 52	Peoples Gas Light & Coke Interconnect Agreement
CX 53	Resume for Tony Baney
CX 54	Resume for Peter Ramanauskas
CX 55	Resume for Kendall Moore
CX 56	Resume for Dr. Michelle Watters
CX 57	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Public Health Service-Agency for Toxic Substances and Disease Registry(November 2000)
CX 58	ATSDR Case Studies in Environmental Medicine Polychlorinated Biphenyls (PCBs) Toxicity
CX 59	Conversion Factors

1. (C) APPROPRIATE PLACE OF HEARING; ESTIMATE OF TIME NEEDED TO PRESENT DIRECT CASE; TRANSLATION SERVICES

As stated in the Complainant's May 13, 2016 portion of the Joint Motion for Extension of time to file Prehearing-Exchanges and Statement of Location, Complainant requested that the hearing in this matter be held in Washington, D.C. at EPA Headquarters' Hearing Room. Subject to cross-examination, Complainant estimates it will need approximately a day and a half to present its direct case. Complainant does not request any translation services.

2. (A) DOCUMENTATION CONFIRMING SERVICE OF COMPLAINT

Attachment A to the Prehearing Exchange is documentation showing service of the complaint was completed in accordance with Section 22.5(b)(1) of the Rules of Practice

2. (B) NARRATIVE STATEMENT EXPLAINING FACTUAL/LEGAL BASES FOR ALLEGATIONS DENIED OR OTHERWISE NOT ADMITTED IN ANSWER

In accordance with the Presiding Officer's instructions and 40 C.F.R. § 22.19, Complainant sets forth in this section a brief narrative statement of the factual and legal bases for the allegations that Respondents denied or otherwise did not admit in their Answer.

Paragraph 27: Nicor denies that the gas meters at the three residences were components of its natural gas pipeline system. EPA has made it evident that gas meters and other end user components are part of Nicor's natural gas pipeline system and their use authorization.

"Natural gas pipeline system means natural gas gathering facilities, natural gas pipe, natural gas compressors, natural gas storage facilities, and natural gas pipeline appurtenances (including instrumentation and vessels directly in contact with transported natural gas such as valves, regulators, drips, filter separators, etc., but not

including air compressors).” 40 CFR 761.3.¹

The 1998 preamble states “[S]ome commenters were concerned that natural gas end users, such as homeowners and businesses, would be covered by the regulations.” 63 FR 35396 (June 29, 1998). Through an editing error, the preamble then stated “[B]ecause end users are excluded from the definition of natural gas pipeline system in § 761.3, they are not subject to the requirements of § 761.30(i).”

The 1998 PCB Questions and Answers Manual, Q&A #4, makes it clear that end users are part of the “natural gas pipeline system” by stating “[E]nd users, such as homes and businesses are part of the use authorization in § 761.30(i), but they are not subject to the requirements in § 761.30(i). They cannot be excluded from the definition of “natural gas pipeline system” because they are part of the use authorization. There will be a technical correction made to the preamble (63 Fed. Reg. 35396) to correct this contradiction.”

Within a year, a technical notice corrected this editing error through a Federal Register notice. The *Technical and Procedural Amendments to TSCA Regulations— Disposal of Polychlorinated Biphenyls (PCBs)*, 64 FR 33755, 33757 (June 24 1999) (**CX3**) states: “The last sentence of the first full paragraph of the second column incorrectly states that the definition of “natural gas pipeline system” in § 761.3 excludes end users. This sentence

¹ While gas meters are not mentioned specifically, gas meters fit the definition of “appurtenances” as an instrumentation and vessel directly in contact with transported natural gas. In the final rule on *Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations* (1984), the fact that gas meters were a part of the natural gas pipeline was assumed when discussing previously discovered PCBs in gas pipelines; “[L]iquids found in natural gas pipelines also have been found to contain elevated PCB levels. PCBs were first identified in liquid found in the gas pipelines in January 1981 when a PCB-containing oily condensate was found in the gas meters of some residential customers of a Long Island, New York, distribution company.” 49 FR 28172, 28185 (1984) (CX 4).

should read, “[A]s noted above, because end users are not sellers or distributors of natural gas, they are not subject to the requirements of § 761.30(i).”

Finally, the *September 2001 Version Revisions to the PCB Q and A Manual Q&A 4 (CX5)* section, §761.30(i) 4A states: “End users, such as homes and businesses are part of the use authorization in §761.30(i), but they are not subject to the requirements in §761.30(i). They cannot be excluded from the definition of “natural gas pipeline system” because they are part of the use authorization.” The September 2001 version was the applicable PCB Q&A document available in 2007 when the alleged violations first began.

Thus, EPA has made it evident that gas meters are a component of Nicor’s natural gas pipeline system and part of the use authorization.

Paragraph 28: Nicor denies that on or about February 7, 2007 the three addresses 700 S. Seminary Avenue, 1440 W. Talcott Road and 1540 W. Talcott Road, Park Ridge, Illinois had a PCB value of 5300 ppm.

EPA is providing a copy of sampling data for the three residences above that Nicor provided to the Illinois Attorney General’s Office on July 19, 2007. EPA The sample report date was February 12, 2007. The combined liquid oil residence sample was taken February 8, as provided in a letter from Nicor to EPA on November 20, 2007. The data confirm the amounts in paragraph 28:

- a. 700 S. Seminary Avenue, Park Ridge, Illinois had a high PCB value of 5300 ppm
- b. 1440 W. Talcott Road, Park Ridge, Illinois had a high PCB value of 5300 ppm
- c. 1540 W. Talcott Road, Park Ridge, Illinois had a high value of 5300 ppm.
- **CX13**, *Letter to Matthew Dunn from Schiff Hardin, RE: Request for information Regarding Pipeline Liquids (July 19, 2007)* demonstrating that the samples from 700 S. Seminary Avenue, 1440 W. Talcott Road and 1540 W. Talcott Road, Park Ridge had a PCB value of 5300ppm.

- **CX14**, *Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation (November 20, 2007)*, Attachment, stating that the sample was a combined liquid sample.

Paragraph 29: Nicor denies it resampled the liquid discovered at the gas meter at 1440 W. Talcott Road, Park Ridge, Illinois and the analysis of that sample noted a PCB concentration of 1900 ppm. EPA reviewed data in its possession and intends to amend its complaint to include the following revision, but otherwise re-alleges the paragraph.

Nicor, on or about February 89, 2007, resampled the liquid discovered at in the natural gas pipeline system (i.e. furnace) gas meter at 1440 W. Talcott Road, Park Ridge, Illinois and the analysis of that sample noted a PCB concentration of 1900 ppm.

Nicor's sample report to the Illinois Attorney General's office reported this sample as 1900 ppm. Nicor later reported this sample to EPA as 1900 mg/Kg. The STAT Analysis Corporation also reported this furnace sample as 1900 mg/Kg.

- **CX13**, *Letter to Matthew Dunn from Schiff Hardin, RE: Request for information Regarding Pipeline Liquids (July 19, 2007)*
- **CX14**, *Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation (November 20, 2007)*
- **CX17**, *Handwritten note and cover memo from STAT Analysis Corporation to SET Environmental 450 Sumac Road re: Nicor Gas 1844 Ferry Road, See page 0008237, page 0008238, and 0008262.*

Paragraph 30: Nicor denies that it discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at a fourth residence on Nicor's natural gas pipeline system located at 1441 W. Talcott Road. It appears that Nicor made a typographical error in its submission to the Illinois Attorney General's Office.

EPA plans to amend its complaint to read:

"On or about February 89, 2007, Nicor discovered PCBs at concentrations ≥ 50

ppm in or from components of its natural gas pipeline system at a ~~fourth~~ residence on Nicor's natural gas pipeline system located at 1440~~1~~ W. Talcott Road in Park Ridge, Illinois.”

- **CX 13**, *Letter to Matthew Dunn from Schiff Hardin, RE: Request for information Regarding Pipeline Liquids* (July 19, 2007)
- **CX 14**, *Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation* (November 20, 2007)
- **CX17**, *Handwritten note and cover memo from STAT Analysis Corporation to SET Environmental 450 Sumac Road re: Nicor Gas 1844 Ferry Road, See page 0008237, page 0008238, and page 28*

Paragraph 31: Nicor otherwise denies the allegations of Paragraph 31 (see amendment below). Nicor admits only that the February 2007 sample identified at 1441 W. Talcott Road should be 1440 W. Talcott Road.

EPA plans to amend its complaint to read:

“On or about February 8~~9~~, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at a ~~fourth~~ residence on Nicor's natural at 1440~~1~~ W. Talcott Road in Park Ridge, Illinois, the analysis specified a PCB concentration of 1300 ppm.”

- **CX 13**, *Letter to Matthew Dunn from Schiff Hardin, RE: Request for information Regarding Pipeline Liquids* (July 19, 2007)
- **CX 14**, *Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation* (November 20, 2007)
- **CX17**, *Handwritten note and cover memo from STAT Analysis Corporation to SET Environmental 450 Sumac Road re: Nicor Gas 1844 Ferry Road, See page 0008237, page 0008238, and page 28*

Paragraph 32: On or about Nicor denies that a “gas meter” is a component of its natural gas pipeline system. See EPA’s response to Paragraph 27 concerning end users and use authorization.

Paragraph 33: Nicor admits the meter sample was 6,000 ppm at 424 S. Delphia in Park Ridge. See EPA's response to Paragraph 27 concerning end users and use authorization.

Paragraph 34: Nicor admitted on or about June 13, 2007, it disclosed to EPA that it had discovered PCB-containing liquids in natural gas meters at four residences in Park Ridge Illinois, and the PCB concentrations were ≥ 50 ppm. Nicor stated it is without sufficient information to either admit or deny the allegations related to the referenced EPA "Record of Communication," and therefore denies any allegations based on that document in Paragraph 34.

See EPA's response to Paragraph 27 concerning end users and use authorization. EPA employee Tony Martig's record of communication described the conversation Nicor employee Jim Jerozal and consultant John Woodyard had with Tony on June 13, 2007. At that time, they notified EPA that Nicor had discovered PCBs in liquid condensate in gas meters at four locations (i.e., residences) on Nicor's natural gas pipeline distribution system in Park Ridge, Illinois and the PCB concentrations were > 50 ppm.

- **CX11**, "*Record of Communication*," Tony Martig (EPA), dated June 13, 2007.

Paragraph 35: Nicor admitted that at two of the residences, the liquids entered certain piping on the customer's side of the meter.

See EPA's response to Paragraph 27 concerning end users and the use authorization.

Paragraph 36: Nicor denied that they would send the sampling plan when *Final*. Tony Martig's record states, "[N]icor is developing a sampling plan and will submit it to the agency once final."

- **CX11**, "*Record of Communication*," Tony Martig (EPA), dated June 13, 2007, bullet 7.

Paragraph 37: Nicor admits it met with EPA on or about June 13, 2007, to discuss PCB-containing liquids that had been found in natural gas meters at four residences with PCB concentrations that were ≥ 50 ppm. Nicor denies that the gas meters at the three residences were components of its natural gas pipeline system.

- See EPA's response to Paragraph 27 concerning end users and use authorization.

Paragraph 38: Nicor admitted it worked with EPA and state regulatory authorities to inspect other locations for the presence of PCBs in the vicinity of 700 S. Seminary Road, 1540 W. Talcott Road, 1440 W. Talcott Road, and S. Delphia Avenue in Park Ridge Avenue. Nicor denied that it was working with EPA and state regulatory authorities to mitigate or eliminate the risk of customer exposure and that it began inspecting approximately 144 additional customer locations on Nicor's natural gas pipeline system.

EPA has provided a copy of correspondence as **CX43:** *Mark Ter Molen to EPA Employee Mony Chabria Re: Park Ridge PCB Investigation (September 19, 2007)*. The correspondence indicates that Nicor had tested 137 sites. EPA understands that the 137 number is in addition to the original sites (Talcott Road, Delphia, Lincoln, Stewart, and Clifton).

Paragraphs 41, 42, 43: Nicor denied the dates of inspection at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois; and Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois as well as 610 S. Clifton Avenue, Park Ridge, Illinois. Nicor specifically denies that these samples were liquid samples.

EPA has provided a copy of sampling data for the following sites that include split samples results from EPA and Nicor pertaining to the sites in question. The sampling data

confirm what was stated in the complaint:

a. Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 1370-2400 ppm (split sample EPA and Nicor);

- **CX20:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's "Operator regulator liquid" sample from August 9, 2007 had a value of 1370 ug/g
 - Indicating EPA's "Monitor regulator liquid" sample from August 9, 2007 had a value of 6110 ug/g
- **CX21:** *Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024 PR, NICOR 200 S. Lincoln, Park Ridge (August 10, 2007)*
 - Indicating Nicor's liquid sample from August 9, 2007 had PCB result of 2400 mg/Kg as well as a second liquid sampling for 6200 mg/Kg

b. Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 3350-1600 ppm (split sample EPA and Nicor)

- **CX22:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's liquid sample: "Oily residue from regulator" from August 6, 2007 had a value of 3350 ug/g
- **CX23:** *Cover Memo from STAT Analysis Corporation to SET Environmental 707024-PR NICOR, 207 S. Lincoln, Park Ridge, IL (August 7, 2007)*
 - Indicating Nicor's liquid sample from August 6, 2007 had a PCB result of 1600 mg/Kg.

c. Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois had a PCB concentration of 590-1140 ppm (split sample EPA and Nicor)

- **CX24:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's liquid sample: "Oily residue from regulator" from August 7, 2007 had a value of 1140 ug/g
- **CX25:** *Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024-PR, NICOR 1500 Stewart, Park Ridge, IL (August 7, 2007)*
 - Indicating Nicor's liquid/sludge sample from August 6, 2007 had a PCB result of 590 mg/Kg.

d. 610 S. Clifton Avenue, Park Ridge, Illinois had a PCB concentration of 1400 ppm (Nicor sample).

- **CX26:** *Cover Memo from Mayer Brown re: Park Ridge PCB Investigation to Mr. Mony Chabria, Ms. Jennifer Tomas (September 4, 2007), Page 2*
indicating "Regulator #1 at 610 S. Clifton Avenue was tested and had a PCB concentration of 1400 ppm"

Paragraph 44: EPA states that Nicor has not provided information to EPA indicating they returned to the locations listed in paragraph 42 to repeat sampling and analysis at least annually where PCBs were ≥ 50 ppm until sampling results indicate that the natural gas pipeline component (e.g., meter or regulator) is < 50 ppm in two successive samples with a minimum interval between samples of 180 days. Nicor asserts this a legal conclusion to which a response is not needed and otherwise denies the allegations if a response is required.

EPA reminded Nicor in several successive emails of their obligation to perform "annual

checks” and to take samples at all sites where PCBs were found at quantities greater than 50ppm. See **CX27**: *Email to James Jerozal from Peter Ramanauskas RE: Annual Sampling (September 4, 2008)*. During subsequent information exchanges, NICOR was not able to demonstrate results from sampling in accordance with the regulatory requirements of 40 CFR 761.30(iii)(1)(A)(5).

In a September 9, 2012 correspondence, in response to an EPA/DOJ request, Nicor submitted a list of sampling data collected by Nicor from liquid collection devices in Park Ridge Illinois since Nicor provided data to EPA in 2007 and 2008. This data has significant gaps, indicating that NICOR was not sampling in accordance with the regulatory requirements of 40 CFR 761.30(iii)(1)(A)(5). See **CX45**: *Email from Mark R. Ter Molen to Mark Chalfant Subject: Nicor Gas PCB Issue (September 9, 2012)*

Paragraph 45: Nicor admitted that it prepared a document at the request of the EPA pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A) and determined that it had no known scrubbers, compressors or filters anywhere in the natural gas pipeline system that were sources of PCBs.

- **CX5**, 2001 Version Revisions to the PCB Q&A Manual, Q&A #4, p.21. ***Is a paper-like filter in a natural gas pipeline system, similar to a car’s oil filter, considered a “source”?*** A: If this filter is kept relatively clean, it most likely will not be a potential source. However, if the filter is allowed to fill up with liquids and is not cleaned out (i.e. per standard operating procedures and manufacturer’s recommendations), it could be a potential source. In this case, it could be a source because it could be introducing PCBs >50 ppm into the pipeline system. The determining factor is whether or not it is introducing PCBs >50 ppm into the pipeline system and causing PCB contamination downstream.
- **CX 48** *Nicor, STANDARD PRACTICE OPERATING – 9 (April 1, 2009)* and **CX49** *Nicor, STANDARD PRACTICE OPERATING – 9 (December 21, 2004)*.

Both of these standard operating practices describe filters and cleaning methods for filters in the Nicor system. Filters are potential sources as described in 40

CFR 761.30(i)(1)(iii)(A)(3).

- **CX48** and **CX49**, page 1 (B)(3) of both documents provide a procedure for verifying if liquids are found in filters.
- **CX 14** See Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation (November 20, 2007), page 3, question 5, Table 1 referencing filters and compressors.
- **CX 46** See also page 4, *Nicor litigation\Evidence\Tab 45- Filters\Key Filters Writing from Nicor/ Nicor Response 4-19-13 Response.pdf*
- **See Paragraph 50** above, referencing **CX48** and Nicor's responsibility with respect to interconnects.
- **CX 52** See page 5, Interconnects: Peoples Gas Light & Coke Interconnect Agreement

Paragraph 47: Nicor denied the allegations of Paragraph 47.

EPA reasserts what was stated in the complaint: "On or about November 20, 2007, in response to EPA's information request, Nicor: (a) identified 38 "compressors" and 35 "filters / separators / dust traps," in its natural gas pipeline system." These are considered potential sources as discussed in Paragraph 56, below.

- **CX14**, *Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation*, (November 20, 2007)

Paragraph 49: Nicor denied allegations in Paragraph 49.

EPA reasserts, "Nicor has not provided historical data that meets the analytical protocol set out in 40 C.F.R. § 761.1(b)(2) for natural gas pipeline compressors, natural gas pipeline scrubbers, natural gas pipeline filters and interconnects."

Nicor has PCB contamination in its natural gas pipeline system. It has provided EPA with information concerning filters and compressors. **CX14.** The preamble to the 1998 PCB regulations states “[T]oday’s rule does not allow the introduction of PCBs into natural gas pipeline systems; instead it authorizes the use and reuse of natural gas pipeline systems that were contaminated with PCBs in the past, provided certain actions are taken.” 63 FR 35396 (1998) **CX2.**

Paragraph 50: Nicor denied allegations in Paragraph 50.

EPA reasserts that “On or about September 4, 2007, Nicor stated that the interconnect station consist of facilities owned and operated by Nicor and facilities owned by the interstate pipeline providing Nicor with natural gas. Nicor also stated that in all cases the interstate pipeline owns and operates the valve(s) between Nicor’s interconnect station facilities and those of the interstate pipeline’s interconnect station facilities that allows the natural gas to flow from one natural gas pipeline system to the other natural gas pipeline system.”

- **CX26:** *Cover Memo from Mayer Brown re: Park Ridge PCB Investigation to Mr. Mony Chabria, Ms. Jennifer Tomas (September 4, 2007), Paragraph 6*
- **CX52:** *Peoples Gas Light & Coke Interconnect Agreement* which is an example of an interconnect agreement indicating that Nicor maintains responsibly for the interconnect

COUNTS

Count 1

(Failure to characterize the Extent of PCB Contamination in Violation of the PCB Use Authorization Regulations)

Paragraph 56: Nicor denied that 40 C.F.R. § 761.30(i)(1)(iii)(A)(2) applies to Nicor

because Nicor's natural gas pipeline system does not include potential sources of introduction of PCBs ≥ 50 ppm. See 40 C.F.R. § 761.30(i)(1)(iii)(B).

- **CX5**, 2001 Version Revisions to the PCB Q&A Manual, Q&A #4, p.21. ***Is a paper-like filter in a natural gas pipeline system, similar to a car's oil filter, considered a "source"?*** A: If this filter is kept relatively clean, it most likely will not be a potential source. However, if the filter is allowed to fill up with liquids and is not cleaned out (i.e. per standard operating procedures and manufacturer's recommendations), it could be a potential source. In this case, it could be a source because it could be introducing PCBs >50 ppm into the pipeline system. The determining factor is whether or not it is introducing PCBs >50 ppm into the pipeline system and causing PCB contamination downstream.
- **CX 48** *Nicor, STANDARD PRACTICE OPERATING – 9 (April 1, 2009)* and **CX49** *Nicor, STANDARD PRACTICE OPERATING – 9 (December 21, 2004)*.
Both of these standard operating practices describe filters and cleaning methods for filters in the Nicor system. Filters are potential sources as described in 40 CFR 761.30(i)(1)(iii)(A)(3).
- **CX48** and **CX49**, page 1 (B)(3) of both documents provide a procedure for verifying if liquids are found in filters.
- **CX 14** See Letter to Mony Chabria from Nicor, re: Park Ridge PCB Investigation (November 20, 2007), page 3, question 5, Table 1 referencing filters and compressors.
- **CX 46** See also page 4, *Nicor litigation\Evidence\Tab 45- Filters\Key Filters Writing from Nicor/ Nicor Response 4-19-13 Response.pdf*
- **See Paragraph 50** above, referencing **CX48** and Nicor's responsibility with respect to interconnects.
- **CX 52** See page 5, Interconnects: Peoples Gas Light & Coke Interconnect Agreement

Paragraph 57: Nicor denies that it took samples from components of its natural gas pipeline system at four residences on or about February 7, 2007 and February 9, 2007.

- See EPA's response to **Paragraphs:** 27

EPA will amend its complaint to reflect three residences, recognizing that 1441 W. Talcott Road was a typographical mistake on Nicor's part.

On or about February 7, 2007 and February 9, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at three ~~four~~ residences on Nicor's natural gas pipeline system located in Park Ridge, Illinois.

Paragraph 58: Nicor denies that it notified EPA 128 and 126 days following discovery of PCBs. Nicor notified EPA of the discovery of PCBs during a phone call with Tony Martig on June 13, 2007, referenced in **CX11** and subsequently met with EPA on June 18, 2007 as evidenced by attached agenda referenced in **CX12**. EPA is aware that Nicor discovered PCBs in its system on February 8th or 9, 2007. See **CX13**. EPA agrees that Nicor notified EPA about four residences on June 13, 2007.

Paragraph 59: Nicor denied that it met with EPA to discuss characterizing the extent of the PCB contamination.

EPA met with Nicor on June 18, 2007 to discuss characterizing the extent of PCB contamination. **CX11**, Record of Communication, and **CX12**, June 18 Agenda and email from EPA to Nicor about the meeting.

Paragraph 60: Nicor denies that on or about July 9, 2007, 151 days and 149 days following the discovery of the PCBs, respectively, Nicor began inspecting approximately 144

additional addresses. EPA is re-stating its response to Paragraph 38.

- Nicor admitted it worked with EPA and state regulatory authorities to inspect other locations for the presence of PCBs in the vicinity of 700 S. Seminary Road, 1540 W. Talcott Road, 1440 W. Talcott Road, and S. Delphia Avenue in Park Ridge Avenue. Nicor denied that it was working with EPA and state regulatory authorities to mitigate or eliminate the risk of customer exposure and that it began inspecting approximately 144 additional customer locations on Nicor's natural gas pipeline system.
- EPA has provided a copy of correspondence as **CX43: Mark Ter Molen to EPA Employee Mony Chabria Re: Park Ridge PCB Investigation (September 19, 2007)**. The correspondence indicates that Nicor had tested 137 sites. EPA understands that the 137 number is in addition to the original sites (Talcott Road, Delphia, Lincoln, Stewart, and Clifton).

Paragraph 61: Nicor specifically denies that PCB liquids at ≥ 50 ppm were found within or were from Nicor's natural gas pipeline system, but admits that concentrations of ≥ 50 ppm were found at other locations. Nicor otherwise denies the allegations of Paragraph 61.

- See EPA's response in **Paragraph 27** for end users and use authorization.
- **EPA is restating its response from Paragraphs 41, 42, 43:** Nicor denied the dates of inspection at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois; and Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois as well as 610 S. Clifton Avenue, Park Ridge, Illinois. Nicor specifically denies that these samples were liquid samples.

EPA is providing a copy of sampling data for the following sites that include split samples results from EPA and Nicor pertaining to the sites in question. The sampling data confirm what was stated in the complaint:

a. Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 1370-2400 ppm (split sample EPA and Nicor);

- **CX20:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's "Operator regulator liquid" sample from August 9, 2007 had a value of 1370 ug/g
 - Indicating EPA's "Monitor regulator liquid" sample from August 9, 2007 had a value of 6110 ug/g
- **CX21:** *Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024 PR, NICOR 200 S. Lincoln, Park Ridge (August 10, 2007)*
 - Indicating Nicor's liquid sample from August 9, 2007 had PCB result of 2400 mg/Kg as well as a second liquid sampling for 6200 mg/Kg

b. Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 3350-1600 ppm (split sample EPA and Nicor)

- **CX22:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's liquid sample: "Oily residue from regulator" from August 6, 2007 had a value of 3350 ug/g
- **CX23:** *Cover Memo from STAT Analysis Corporation to SET Environmental 707024-PR NICOR, 207 S. Lincoln, Park Ridge, IL (August 7, 2007)*

- Indicating Nicor's liquid sample from August 6, 2007 had a PCB result of 1600 mg/Kg.
- c. Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois had a PCB concentration of 590-1140 ppm (split sample EPA and Nicor)
 - **CX24:** *Cover Memo from Marilyn Jupp to TSCA LCD R5, Subject: Review of Region 5 Data for Nicor Gas (October 25, 2007)*
 - Indicating EPA's liquid sample: "Oily residue from regulator" from August 7, 2007 had a value of 1140 ug/g
 - **CX25:** *Cover Memo from STAT Analysis Corporation to SET Environmental Re: 707024-PR, NICOR 1500 Stewart, Park Ridge, IL (August 7, 2007)*
 - Indicating Nicor's liquid/sludge sample from August 6, 2007 had a PCB result of 590 mg/Kg.
- d. 610 S. Clifton Avenue, Park Ridge, Illinois had a PCB concentration of 1400 ppm (Nicor sample).
 - **CX26:** *Cover Memo from Mayer Brown re: Park Ridge PCB Investigation to Mr. Mony Chabria, Ms. Jennifer Tomas (September 4, 2007), Page 2* indicating "Regulator #1 at 610 S. Clifton Avenue was tested and had a PCB concentration of 1400 ppm"

Paragraph 62: Nicor specifically denies that 40 C.F.R. § 761.30(i)(1)(iii)(A)(2) applies to Nicor because Nicor's natural gas pipeline system does not include potential sources of introduction of PCBs \geq 50 ppm. See 40 C.F.R. § 761.30(i)(1)(iii)(B).

- See EPA's response in **Paragraphs 50 and 56** discussing potential sources.

Paragraph 63: Nicor denies that it failed to characterize the extent of the PCB

contamination by collecting and analyzing samples to identify the upstream and downstream endpoints of the segments or components where PCBs at ≥ 50 ppm were discovered at the customer locations in Park Ridge, Illinois, within 120 days of discovery constitutes a failure or refusal to comply with the TSCA PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A)(2).

- See EPA's response to **Paragraphs 29, 41-43, 44 and 56.**

Count 2

(Failure to Identify all Potential Sources of PCB Contamination in Violation of Use Authorization Regulations)

Paragraphs 67, 68, 69: Paragraphs 67-69 include the regulatory requirements of the natural gas pipeline use authorization for natural gas pipelines. Nicor states these are legal conclusions and states that it is not subject to these requirements because it does not potential sources of introduction of PCBs ≥ 50 ppm.

- See EPA's response to **Paragraph 56**

Paragraph 70: EPA states that the natural gas pipeline compressors, natural gas pipeline filters and interconnects identified by Nicor are "potential sources" under 40 C.F.R. § 761.30(i)(1)(iii)(A)(3). Nicor asserts this is a legal conclusion and denies the conclusion.

EPA asserts Nicor has potential sources (compressors, filters, interconnects) (See: **Paragraph 56**) with findings of ≥ 50 ppm (See: **CX13.**)

Paragraph 71: Nicor denies the allegations in Paragraph 71.

EPA reasserts the claim made in Paragraph 71 that "Nicor's failure to identify and sample and analyze natural gas pipeline compressors, natural gas pipeline filters and interconnects within 120 days of characterization of the extent of PCB contamination constitutes a failure or refusal to comply with the PCB use authorization regulations at 40

C.F.R. § 761.30(i)(1)(iii)(A)(3).”

Paragraph 73: Nicor denies the allegations in Paragraph 73.

EPA reasserts the claim that Nicor’s failure to comply with 40 C.F.R. § 761.30(i)(1)(iii)(A)(3) constitutes a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

Count 3

(Failure to Repeat Sampling and Analysis of PCB Contamination in Violation of Use Authorization Regulations)

Paragraph 76: Nicor specifically denies that it is required to conduct repeat sampling and analysis at the locations specified in Paragraph 41 and Nicor otherwise denies the allegations in Paragraph 76. EPA asserts Nicor has potential sources (compressors, filters, interconnects) (See: **Paragraph 56**) with findings of ≥ 50 ppm (See: **CX13**) and failed to provide evidence of repeat sampling (See: **Paragraph 44**).

Paragraph 77: Nicor denies the allegations in Paragraph 77 that it failed to conduct repeat sampling and analysis at the locations specified in Paragraph 41.

- See EPA’s response in **Paragraph 44**.

Paragraph 79: Nicor denies the allegations in Paragraph 79.

EPA reasserts its statement made in the complaint: Nicor’s failure to comply with 40 C.F.R. § 761.30(i)(1)(iii)(A)(5) constitutes a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

IV. Defenses

Complainant will respond to Respondent’s affirmative defenses asserted in the Defenses section of the Answer and its explanation of arguments in support of such affirmative defenses in

Complainant's Rebuttal Prehearing Exchange, as instructed by Administrative Law Judge Coughlin's Prehearing Order.

**2. (C) FACTUAL INFORMATION AND SUPPORTING DOCUMENTS
RELEVANT TO COMPLAINANT'S PROPOSED PENALTY**

And

**2. (D) DETAILED EXPLANATION OF THE FACTORS CONSIDERED AND
METHODOLOGY USED TO CALCULATE THE PROPOSED PENALTY**

Introduction

Section 16(a)(1) of TSCA, 15 U.S.C. 2615(a)(1), allows for the assessment of civil monetary penalties for each violation and for every day that the violation continues or is repeated. Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), provides that in determining the amount of a civil penalty, the EPA shall take into account the nature, circumstances, extent and gravity of the violations, and with respect to the violator: a) its ability to pay, b) the effect on its ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require. Also considered in assessing a proposed penalty is EPA's April 9, 1990 Polychlorinated Biphenyls (PCB) Penalty (PCB Penalty Policy) and the Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act: PCB Penalty Policy (45 Fed. Reg. 59770 September 10, 1980).² These Policies provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. The internet address of the 1990 PCB Penalty Policy is: <https://www.epa.gov/enforcement/polychlorinated-biphenyls-pcb-penalty-policy>. The internet address for the 1980 PCB Policy is

² The 1980 PCB Penalty Policy necessitates that penalty assessments factor in the violation's "effect on the Agency's ability to implement or enforce the Act." 45 FR 59772. Specifically, the extent of environmental harm that could result from a given violation included "[t]he effect on the Agency's ability to implement or enforce the Act [as] the principal circumstance to be considered." *Id.* Violations of the use authorization can cause significant harm to the TSCA PCB regulatory program and defeat the Agency's goal of reducing PCBs.

<https://www.epa.gov/enforcement/federal-register-notice-guidelines-assessment-civil-penalties-under-section-16-toxic>

TSCA's statutory maximum was increased over time to \$37,500 per day per violation with the passage of The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701. In addition, when establishing a penalty the EPA is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. 2461 to adjust the civil penalty for inflation on a periodic basis.

Assessment of Civil Monetary Penalties under TSCA

With respect to the violations, the following is evaluated as required by TSCA:

(1) The *nature* of a violation is its essential character of the violation. PCB violations are characterized as “chemical control.” Factual information supporting that the violations are all PCB violations can be found in the pre-hearing exchange document dated August 5, 2016.

(2) The *circumstance* of the violation represents the probability of harm resulting from a particular type of violation. The PCB Penalty Policy lists examples of types of violations for assisting in determining the appropriate circumstance levels (PCB Penalty Policy p 10-12). The Civil Penalty Assessment Worksheet at Exhibit **CX40** references the specific CFR sections for the violations, which are listed as examples in the circumstance levels in the PCB Penalty Policy.

(3) The *extent* of the violation represents the degree, range, or scope of a violation's potential for harm. The PCB Penalty Policy characterizes *extent* based on the quantity or amount of PCBs as the measure of the potential or actual harm (PCB Penalty Policy p 3-6).

(4) The *gravity* of the violation incorporates the nature and circumstance of a violation and extent to which the violation poses a potential for harm. The PCB Penalty Policy uses the “Gravity-Based Penalty Matrices,” on p. 9 to incorporate the nature, circumstance, and extent

factors to derive an appropriate gravity-based penalty. The Civil Penalty Assessment Worksheet at Exhibit CX40 identifies the penalties for each alleged violation.

With respect to the violator, the following is evaluated as required by TSCA:

(1) *Inability to pay.* The Respondent has not alleged in its Answer or by other means any inability to pay the proposed penalty, or provided any financial documentation to Complainant on inability to pay. The proposed penalty is based on the best information available to EPA at the time the Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. Complainant has provided financial information for Respondent as exhibit **CX41**, indicating a presumption that the Respondent has the ability to pay.

(2) *Ability to continue to do business.* The Respondent has not alleged in its Answer or by other means that it is unable to continue to do business due to the proposed penalty, or provided any financial documentation to Complainant on its ability to continue to do business. The proposed penalty was based on the best information available to EPA at the time the Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. Complainant has provided financial information for Respondent as exhibit **CX41**, indicating a presumption that the Respondent has the ability to pay.

(3) *History of prior violations.* The complainant is unaware of any history of prior violations of the TSCA PCB regulations.

(4) *Culpability.* The Complaint does not reflect any increase in the penalty amounts for the violations based on culpability. The ERPP allows a 25% upward or downward adjustment. Nonetheless, the Respondent: (1) controlled its pipeline system in that it both owned the

equipment and employed the workers operating the system; and (2) knew or should have known of the requirements violated in that it is a business enterprise that is in the business of receiving, storing, distributing and selling natural gas to approximately 2.2 million customers.

(5) *Such other matters as justice may require.* Determining the economic benefit of noncompliance is authorized under the “as justice may require” factor. No penalty was proposed based on economic benefit of noncompliance, and Complainant offers no proof of such. Other factors in this category are: (1) voluntary disclosure of the violation prior to an inspection, investigation, or tip/complaint.; (2) attitude; and (3) special circumstances/extraordinary adjustments. PCB Penalty Policy p. 17-19. For item (1), there was a voluntary disclosure made by Respondent of the violations prior to any investigation and an adjustment of 25% was made for each count. For item (2), adjustments may be made up to 15% where the company cooperates in addressing the issue and applying the regulations to its specific situation. For item (3), Respondent conducted a limited effort to identify other customers in the Park Ridge area that may also have collected pipeline liquids containing regulated levels of PCBs in gas meters servicing their residences and commercial buildings. While Complainant maintains that this effort did not satisfy the regulatory requirements at 40 CFR 761.30(i)(1)(A)(3) to identify potential sources of PCBs including natural gas compressors, natural gas scrubbers, natural gas filters and interconnects where natural gas is received, Complainant has limited or capped the continuing violations in Count 2 at 120 days to (a) reflect Respondent’s efforts, (b) because Respondent is unaware of any history of prior violations of the TSCA PCB regulations and (c) the *extent* of the violations was classified as minor.

Penalty Specified in the Complaint

The proposed penalty is based on the best information available to EPA at the time the

Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. It should be noted that the penalty specified in the Complaint is \$311,454.50. At the time that the penalty was calculated, the penalty did not take into account the penalty adjustments for inflation under The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as the EPA is required to do by law. The EPA will be seeking leave of the Court to amend the Complaint regarding the penalty assessment. **Exhibit CX40** sets out the penalty calculation for this matter.

2. (E) STATEMENT OF INTERNET ADDRESSES TO EPA GUIDANCE, POLICIES, AND PREAMBLES RELIED UPON CALCULATING AMOUNT OF THE PROPOSED PENALTY.

1. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B)
2. EPA's *Polychlorinated Biphenyls (PCB) Penalty Policy* (April 9, 1990)
<https://www.epa.gov/enforcement/polychlorinated-biphenyls-pcb-penalty-policy>
3. *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59,770 (1980)
<https://www.epa.gov/enforcement/federal-register-notice-guidelines-assessment-civil-penalties-under-section-16-toxic>

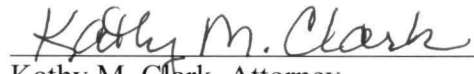
RESERVATION OF RIGHTS

Complainant respectfully reserved the right to call all witnesses called by the Respondent; to recall any of its witnesses in rebuttal; and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondent and the Presiding Officer.

Respectfully Submitted,

Counsel for EPA:

August 5, 2016
Date


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(Complainant Exhibits)
(Certificate of Service)