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2006 APR 10 AM 9:29

ENVIR. APPEALS BOARD

April 7, 2006

VIA FEDERAL EXPRESS

Clerk of the Board
Environmental Appeals Board
United States Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, DC 20005

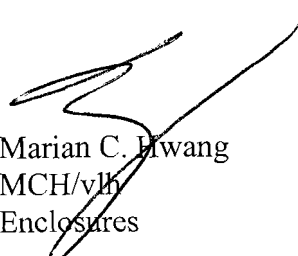
RE: In re: Environmental Protection Services, Inc.
(U.S. EPA Docket No. TSCA-03-2001-0331)
TSCA Appeal No. 06-(01)

Dear Clerk:

On behalf of the Appellant, Environmental Protection Services, Inc., ("EPS"), please find enclosed an original and one copy of a Notice of Appeal.

Thank you for your courtesy in this matter.

Very truly yours,


Marian C. Hwang
MCH/vlh
Enclosures

cc: Honorable Judge Carl C. Charneski
Cheryl L. Jamieson, Esquire, Senior Assistant Regional Counsel
John J. Ruggero, Esquire
Lee A. Spielman, Esquire
Lydia A. Guy, Regional Hearing Clerk

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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ENVIR. APPEALS BOARD

In re:)
)
ENVIRONMENTAL PROTECTION)
SERVICES, INC.)
)
Docket No. TSCA-03-2001-0331)

TSCA Appeal No. 06-(01)

NOTICE OF APPEAL

Respondent/Appellant, Environmental Protection Services, Inc. (EPS), by its undersigned counsel, submits this Notice of Appeal ("Notice") from an Initial Decision, In the Matter of Environmental Protection Services, Inc. (Docket No. TSCA-03-2001-0331), dated March 7, 2006, and served upon undersigned counsel on March 13 and 17, 2006.

In accordance with 40 C.F.R. § 22.30, Appellant's Notice sets forth below the following information:

1. Summary of the Order - Appellant appeals from an Initial Decision, issued by the Honorable Carl C. Charneski, on March 7, 2006, In the Matter of Environmental Protection Services, Inc., Docket No. TSCA-03-2001-0331. The Initial Order erroneously held that Appellant had violated the Toxics Substance Control Act and the terms of EPS's TSCA storage approval. These counts included the following: Count I in which EPA erroneously alleged (as a matter of law and/or fact) that EPS had stored waste PCB transformers in excess of the maximum storage capacity provided in EPS's TSCA PCB Commercial Storage Approval on two separate occasions for which a civil penalty of \$37,400 was assessed; Count II in which EPA erroneously alleged (as a matter of law and/or fact) that EPS had stored waste PCB capacitors in excess of the maximum storage capacity set forth in its TSCA PCB Commercial Storage

Approval for which a penalty of \$27,500 was assessed; Count III in which EPA erroneously (as a matter of law and/or fact) alleged that EPS had violated certain time and temperature requirements set forth at 40 C.F.R. § 761.72(a)(3), which regulated the burning of “regulated material” in EPS’s Scrap Metal Recovery Oven for which a penalty of \$86,900 was assessed. The Initial Order, further, erroneously found (as a matter of law and/or fact) that EPS had failed to prove its affirmative defense of selective prosecution. In summary, Appellant appeals all findings of the Initial Order, including but not limited to the Initial Order with regard to Count I, Count II, Count III, Appellant’s affirmative defense of selective enforcement, and the calculation of civil penalties.

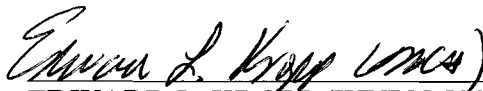
2. Brief in Support of Appeal - Pursuant to the Environmental Appeal Board’s Order Granting Appellant’s Motion for Extension of Time to File Appeal Brief, dated April 4, 2006, by the Honorable Scott C. Fulton, Appellant’s Appeal Brief will be filed on or before May 12, 2006.

Respectfully submitted,

Environmental Protection Services, Inc.
By Counsel



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Counsel for Respondent,
Environmental Protection Services, Inc

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

**ENVIRONMENTAL PROTECTION
SERVICES, INC.**

Docket No. TSCA-03-2001-0331

TSCA Appeal No. 06-(01)

CERTIFICATE OF SERVICE

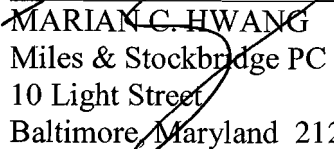
I hereby certify that on this 7th day of April 2006, service of the foregoing ENVIRONMENTAL PROTECTION SERVICES, INC.'s NOTICE OF APPEAL was made by federal express to the following:

Lydia A. Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street, Mail Stop (3RC00)
Philadelphia, PA 19103-2029

Honorable Carl C. Charneski
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Office of Administrative Judges
1099 14th Street, N.W., Suite 350
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