

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh Martinez 11/22/17
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TSCA-01-2018-0008

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

David J. Favale, Owner
Connecticut Oil Recycling Services, LLC
27 Mill Street
Middletown, CT 06457

Total Dollar Amount of Receivable \$ 32,397.00 Due Date: 12/22/17

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1ST \$ _____ on _____
2ND \$ _____ on _____
3RD \$ _____ on _____
4TH \$ _____ on _____
5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
direct: (617) 918-1867
martinez.hugh@epa.gov

RECEIVED

NOV 22 2017

EPA ORC
Office of Regional Hearing Clerk November 22, 2017

BY HAND

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, MA 02109-3912

Re: *In Re Connecticut Oil Recycling Services, LLC, Docket No. TSCA-01-2018-0008*
Simultaneous Filing of Complaint and Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a signed Complaint as well as the original and one copy of an approved Consent Agreement and Final Order (CAFO) that, together, will initiate and resolve the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the Complaint, CAFO, and this cover letter were mailed to the Respondent in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA Region 1

Enclosures

cc: David J. Favale, Owner
Connecticut Oil Recycling Services, LLC

Marianne Milette, PCB Enforcement Coordinator
EPA Region 1 – New England

In the Matter of Connecticut Oil Recycling Services, LLC
Docket No. TSCA-01-2018-0008

CERTIFICATE OF SERVICE


I hereby certify that the foregoing administrative Complaint and Notice of Opportunity for Hearing as well as the foregoing Consent Agreement and Final Order have been provided to the following persons on the date noted below:

Original and one copy,
hand-delivered to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

One copy by First Class Mail,
Return receipt Requested, to the
Respondent as follows:

David J. Favale, Owner
Connecticut Oil Recycling Services, LLC
27 Mill Street
Middletown, CT 06457



Hugh W. Martinez, Sr. Enforcement Counsel
U.S. EPA Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

Date:

11-22-17

Phone (dir.): (617) 918-1867

Fax: (617) 918-0867

E-mail: Martinez.hugh@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

NOV 22 2017

EPA ORC
Office of Regional Hearing Clerk

)
In the Matter of:)
)
)
Connecticut Oil Recycling Services, LLC)
27 Mill Street)
Middletown, CT 06457,)
)
)
Respondent.)
)

Docket No.
TSCA-01-2018-0008

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and in accordance with 40 C.F.R. § 22.18 of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules of Practice”).

I. INTRODUCTION

2. Complainant, the United States Environmental Protection Agency (“EPA”), Region 1, initiated this proceeding against Respondent, Connecticut Oil Recycling Services, LLC (“Respondent”), by filing a Complaint and Notice of Opportunity for Hearing (“Complaint”), simultaneously with this CAFO.

3. The complete factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint and is incorporated herein by reference.

II. TERMS OF SETTLEMENT

4. The provisions of this Consent Agreement and Final Order shall apply to and be binding on Respondent, its officers, directors, successors and assigns, until Respondent has completed all of the obligations required by this CAFO.

5. Respondent agrees that EPA has jurisdiction over the subject matter alleged in the Complaint, and hereby waives any defenses it might have as to jurisdiction and venue.

6. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding, and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

7. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

8. Without admitting or denying the facts and violations alleged in the Complaint, Respondent consents to the terms and issuance of this CAFO and consents, for the purposes of settlement, to the payment of the civil penalty as set out in this CAFO.

9. Respondent certifies that it is presently in compliance with Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. Part 761.

10. After consideration of the nature of the violation alleged in the Complaint and other relevant factors, Complainant has determined that it is fair and proper that Respondent pays a civil penalty in the amount of \$32,397 in settlement of this matter.

Penalty Payment

11. Respondent shall pay the total penalty amount of \$32,397 within 30 days of the

effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$32,397 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day.
- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of Connecticut Oil Recycling Services, LLC*, Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (TSCA-01-2018-0008), shall be in the amount stated in Paragraph 10 above, and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 04-6
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 04-3
Boston, MA 02109-3912
Martinez.hugh@epa.gov

12. Interest, penalty and other charges for late payment. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the civil penalty if it is not paid within 30 calendar days of the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling

costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

13. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

Additional Provisions

14. Compliance with this CAFO, including payment of any penalties, interest, or other charges, shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and does not waive, suspend, or modify the responsibility of the Respondent to comply with such laws and regulations.

15. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA for the specific violation alleged in this CAFO. Nothing in this CAFO shall prevent EPA from taking any necessary action to address conditions at Respondent's facility which may present an imminent and substantial endangerment to public health or the environment. Nor shall this CAFO be construed to, nor is it intended to operate in any way to, resolve any criminal liability or any other civil liability of Respondent.

16. Each party shall bear its own costs and fees in this proceeding.

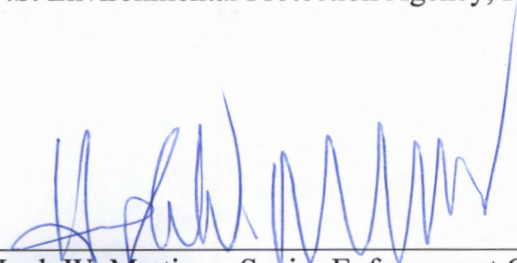
17. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

For Complainant, U.S. Environmental Protection Agency:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

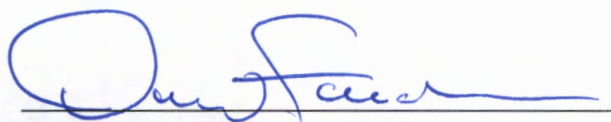
Date: 11/21/17



Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 11-16-17

For Respondent, Connecticut Oil Recycling Services, LLC:



Date: 6/16/17

Print Name: David Favalone

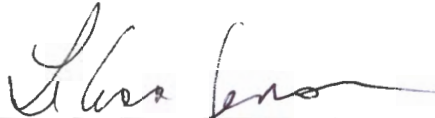
Title: owner

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Connecticut Oil Recycling Services, LLC, is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date it is filed with the Regional Hearing Clerk.

Date:

November 21, 2017



LeAnn W. Jensen, Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)

CONNECTICUT OIL RECYCLING SERVICES, LLC)
27 Mill Street)
Middletown, CT 06457,)

Respondent.)

Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)

Docket No.
TSCA-01-2018-0008

**COMPLAINT
AND
NOTICE OF OPPORTUNITY
FOR HEARING**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued by Complainant, the U. S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 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," 40 C.F.R. Part 761 ("PCB Regulations"). The alleged violation involves the failure to properly prepare a hazardous waste manifest for waste containing PCBs. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

2. The Respondent in this action, Connecticut Oil Recycling Services, LLC (“Respondent” or “CORS”), is hereby notified of Complainant’s determination that CORS has violated Section 15 of TSCA, 15 U.S.C. § 2614, and the PCB Regulations, including 40 C.F.R.

Part 761, Subpart B [*Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items*, at 40 C.F.R. §§ 761.20 – 761.35] and Subpart K [*PCB Waste Disposal Records and Reports*, at 40 C.F.R. §§ 761.202 – 761.219]. Respondent is also hereby notified that Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides for the assessment of civil and/or criminal penalties for violations of TSCA Section 15.

I. STATUTORY AND REGULATORY AUTHORITY

3. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), requires EPA to promulgate regulations with respect to the disposal of PCBs.

4. The PCB Regulations at 40 C.F.R. Part 761 were promulgated pursuant to TSCA Section 6(e). The PCB Regulations "establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." 40 C.F.R. § 761.1(a).

5. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), states that it shall be unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

6. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of civil penalties for violations of TSCA Section 15.

7. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of TSCA Section 15 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

8. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (“Debt Collection Improvement Act”), and 40 C.F.R. Part 19, violations of Section 15 of TSCA that trigger penalties under Section 16(a)(1) and occurred after December 6, 2013 are subject to penalties of up to \$37,500 per violation per day. Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 (“2015 Penalty Inflation Act”), 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, the \$37,500 maximum penalty was raised to \$38,114 for each such violation that occurs after November 2, 2015 with penalties assessed on or after January 15, 2017. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 82 Fed. Reg. 3633 (January 12, 2017).

II. GENERAL ALLEGATIONS

9. Respondent is a corporation incorporated under the laws of the State of Connecticut.

10. Respondent owns and operates a facility located at 27 Mill Street in Middletown, Connecticut. On information and belief, as part of its operations, Respondent’s tanker truck drivers pick up waste oil from various customers, add the waste oil to Respondent’s tanker truck where it is combined with waste oil picked up from other customers, and then transport the tanker truck to a used oil and processing marketing facility, known as Active Oil, for recycling and/or disposal.

11. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

12. On December 22, 2015, EPA Region 1 filed a Consent Agreement and Final Order (the “2015 CAFO”) resolving administrative civil penalty claims alleged in a Complaint

filed by Region 1 in September 2015 under TSCA Section 14(a) and the Consolidated Rules of Practice. The violation alleged by EPA and resolved by the 2015 CAFO involved CORS' failure to properly prepare a hazardous waste manifest for PCB-containing waste, as required by the PCB Regulations at 40 C.F.R. § 761.207.

13. Among other things, the 2015 CAFO required CORS to pay a \$20,000 civil penalty in settlement of the violation based, in part, on consideration of Respondent's financial ability to pay. *See In the Matter of Connecticut Oil Recycling Services, LLC, Docket No. TSCA-01-2015-0071.*

14. As a result of the EPA enforcement action that was resolved through the 2015 CAFO, on or about October 1, 2015, Respondent established written procedures requiring all CORS' municipal transfer station customers to sample used oil and analyze it for PCB contamination before Respondent picked up or removed the used oil.

15. The City of Ansonia Transfer Station at North Division Street in Ansonia, Connecticut (the "Ansonia Station") is operated by the City of Ansonia Department of Public Works ("Ansonia DPW"). The Ansonia Station provides waste disposal, transfer, and recycling services, including the collection of used oil (waste oil).

16. On or about August 1, 2016, the Ansonia DPW had the used oil located in an above-ground storage tank at the Ansonia Station sampled and tested for the presence of PCBs. The laboratory analysis of the sample collected from the used oil tank at Ansonia Station

(hereinafter, the “Ansonia Waste Oil”) revealed a PCB concentration of 140 parts per million (“ppm”) PCBs.

17. On August 1, 2016, the Ansonia DPW provided to Respondent, by fax, a copy of the analytical results showing the PCB concentration of the Ansonia Waste Oil at 140 ppm.

18. On August 2, 2016, Respondent dispatched a tanker truck, identified by CORS as truck no. 10, to the Ansonia Station to pick up the Ansonia Waste Oil that was the subject of the analytical results described in the preceding Paragraph 17.

19. As a result of Respondent’s dispatching tanker truck no. 10 to the Ansonia Station, on August 2, 2016, CORS tanker truck no. 10 removed approximately 500 gallons of the Ansonia Waste Oil from the above-ground storage tank located there. The written documentation used for this transaction consisted of a Non-RCRA Hazardous Bill of Lading (“BOL”) No. 28609.

20. On BOL No. 28609, the Ansonia Waste Oil was identified as a shipment of “585 gallons” of “used oil,” the Ansonia Station was listed as the “generator,” and CORS was listed as the “transporter.”

21. The Ansonia Waste Oil that Respondent removed from the Ansonia Station on August 2, 2016 under BOL 28609 was the same used oil that had been tested by the Ansonia DPW, on or about August 1, 2016, and found to contain 140 ppm PCBs.

22. After Respondent picked up the Ansonia Waste Oil from the Ansonia Station on August 2, 2016 under BOL 28609, CORS truck no. 10 continued to collect waste oil from

various locations over the following several days, from August 2, 2016 through August 8, 2016.

23. On August 8, 2016, Respondent sent tanker truck no. 10 to the Active Oil facility located at 120 Forbes Avenue in New Haven, Connecticut (the “Active Oil Facility”) to deliver (i.e., offload) the contents of its oil tank for recycling and/or disposal. By that time, tanker truck no. 10 contained a combined total of about 4,628 gallons of waste oil (the “Active Waste Oil”), including the Ansonia Waste Oil that CORS had collected from the Ansonia Station, on August 2, 2016.

24. For the August 8, 2016 delivery of the approximately 4,628 gallons of waste oil from tanker truck no. 10 (i.e., the Active Waste Oil), Respondent provided the Active Oil Facility with a Non-RCRA Hazardous Bill of Lading No. 28492 (“BOL 28492”).

25. Under BOL 28492, Respondent delivered/offloaded the contents of tanker no. 10 (i.e., the Active Waste Oil) into a 15,000 gallon holding tank at the Active Oil Facility (hereinafter, the “Active Oil Holding Tank”). On BOL No. 28492, Respondent identified this shipment as “used oil,” signed the “Generator^(c)s Certification,” listed “Various Pickups” under the space identified as the “Generator Site Address,” and identified itself (CORS) as the “transporter.”

26. When the Active Oil Holding Tank accumulated approximately 13,000 gallons of waste oil, the Active Oil Facility had the used oil in the Active Oil Holding Tank sampled and tested for the presence of PCBs. Analysis of the sample from the Active Oil Holding Tank revealed a PCB concentration of 14 ppm. The Active Oil Facility traced the source of the PCB

contamination back to the CORS delivery that had been made under BOL 28492. Active Oil notified CORS of the PCB contamination.

27. At the time Respondent delivered the load of waste oil from tanker no. 10 (i.e., the Active Waste Oil), the Active Oil Facility was not a TSCA-approved facility authorized to store or dispose of PCB-contaminated waste and, on or about August 11, 2016, Active Oil notified the Connecticut Department of Energy and Environmental Protection (“CTDEEP”) and CORS of its findings regarding the PCB contamination of the Active Waste Oil.

28. After receiving the call from Active Oil indicating that an approximately 5,000-gallon load of used oil received from Respondent and placed into one of the Active Oil Facility’s holding tanks had been tested and found to be contaminated with PCBs, on August 15, 2016, a CTDEEP inspector, as a representative of EPA, conducted an inspection at the Ansonia Station (the “CTDEEP Inspection”).

29. During the CTDEEP Inspection, Ansonia DPW provided a copy of the analytical results from the used oil at Ansonia Station that had been tested and found to contain PCBs at a concentration at 140 ppm (i.e., the Ansonia Waste Oil).

30. By adding PCB contaminated waste oil collected from the Ansonia Station to oils contained in or added to tanker truck no. 10, and then emptying the contents of tanker truck no. 10 to a tank located at the Active Oil Facility, Respondent’s actions resulted in the PCB contamination of approximately 4,628 gallons of Waste.

31. Based on information obtained during or as a result of the CTDEEP Inspection,

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

III. VIOLATIONS

COUNT 1

Failure to Prepare Hazardous Waste Manifest

32. Complainant realleges and incorporates by reference Paragraphs 1 through 31.

33. Pursuant to 40 C.F.R. § 761.207(a), a generator who transports, or offers for transport, PCB waste for commercial off-site storage or disposal must prepare a hazardous waste manifest on EPA Form 8700-22. For each bulk load of PCBs, the generator shall specify on the manifest, among other things, the following information:

- a. the identity of the PCB waste;
- b. the earliest date of removal from service for disposal; and,
- c. the weight in kilograms of the PCB waste.

34. In accordance with 40 C.F.R. § 761.20(e)(2)(ii), concerning the testing of used oil fuel, “. . . if any PCBs at a concentration of 50 ppm or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the [PCB] disposal requirements. . .”

35. With respect to the shipment of waste oil on August 8, 2016 (BOL No. 28492), Respondent was a "generator of PCB waste," as defined in 40 C.F.R. § 761.3.

36. At all times relevant to the allegations of violation in this Complaint, the Ansonia Waste Oil and the Active Waste Oil was "PCB waste," as defined in 40 C.F.R. § 761.3.

37. As described in Paragraphs 23, 24, and 25, above, Respondent “transport[ed], or offer[ed] for transport” PCB waste by shipping it to the Active Oil Facility.

38. As described in Paragraphs 23, 24, and 25, above, Respondent offered PCB waste to the Active Oil Facility for commercial off-site “disposal,” as defined in 40 C.F.R. § 761.3.

39. Accordingly, pursuant to 40 C.F.R. § 761.207(a), Respondent was required to properly prepare a hazardous waste manifest for the PCB waste it transported to the Active Oil Facility, on August 8, 2016.

40. The Bill of Lading that Respondent used to transport the Active Waste Oil to the Active Oil Facility on August 8, 2016 (*i.e.*, BOL No. 28492) was not a proper hazardous waste manifest because it did not:

- a. comply with the required manifest form (*e.g.*, EPA Form 8700-22);
- b. identify the Waste as PCB waste;
- c. list the weight of the Waste in kilograms; and,
- d. include the storage for disposal date.

41. Accordingly, Respondent's failure to comply with the PCB manifesting requirements for BOL. No. 28492, as described in the preceding Paragraph 40, above, constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA for which penalties may be assessed pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a).

IV. PROPOSED CIVIL PENALTY

42. Section 16(a) of TSCA 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, 31 U.S.C. § 3701 note, and EPA’s Civil Monetary

Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), violations that occur after December 6, 2013 are subject to penalties up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643, 66647 (November 6, 2013). Under the 2015 Penalty Inflation Act, 28 U.S.C. § 2461 note, effective August 1, 2016, and the Penalty Inflation Rule, the \$37,500 maximum penalty remained \$37,500 for violations occurring after November 2, 2015 and assessed after July 31, 2016 but before January 15, 2017. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016). Under the 2015 Penalty Inflation Act and the Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$38,114 for such violations where the penalties are assessed on or after January 15, 2017. *See* 82 Fed. Reg. 3633 (January 12, 2017).

43. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B). To assess a penalty for the violation alleged herein, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA’s April 9, 1990 “Polychlorinated Biphenyls (PCB) Penalty Policy” (“PCB Penalty Policy”), a copy of which is included with this Complaint. *See* 55 Fed. Reg. 13955 (Notice of Availability of Polychlorinated Biphenyls Penalty Policy, April 13, 1990). The PCB Penalty Policy, as well as EPA guidance

regarding inflationary adjustments to penalties for violations occurring after November 2, 2015 [namely, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016), a copy of which is included with the Complaint], provide a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerative above to particular cases. *See* 81 Fed. Reg. 43091-96 (July 1, 2016); 82 Fed. Reg. 3633 (January 12, 2017).

44. By this Complaint, Complainant seeks to assess civil penalties of up to the statutory maximum per violation against Respondent for the following violation:

- a. **COUNT 1:** *One violation of 40 C.F.R. § 761.207(a) for failure to properly prepare a hazardous waste manifest for bulk PCB waste offered for storage or disposal* – Respondent's failure to prepare a hazardous waste manifest for 4,628 gallons of PCB waste offered for storage or disposal is considered a "Major Manifesting" violation (non-disposal) under the PCB Penalty Policy. It is designated as a Major Extent, High Range, Level 1 violation that increased the likelihood of improper PCB disposal or release into the environment, increased the potential for harm from PCBs (e.g., in a fire), and decreased EPA's ability to determine compliance. The previous, similar violation that was alleged by EPA and resolved through the 2015 CAFO is part of Respondent's "history" of noncompliance and, under TSCA and the PCB Penalty Policy, would serve to adjust the penalty upward to increase the motivation for CORS to comply with TSCA and the PCB Regulations in the future.

45. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty amount for the violation alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. Complainant will calculate a proposed penalty based, in part, on its current knowledge of the Respondent's financial condition. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues or

defenses relevant to the appropriate amount of the penalty. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the "Treasurer, United States of America." Respondent should note on the check the docket number of this Complaint (EPA Docket No. TSCA-01-2018-0008). The check shall be forwarded to:

U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

Notice may be given to Mr. Martinez via e-mail, at Martinez.hugh@epa.gov.

46. Neither the assessment nor payment of an administrative penalty shall affect Respondents' continuing obligation to comply with all applicable requirements of federal law.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

47. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondent has a right

to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated into a written Answer. **Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes

an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

48. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with this Complaint.

VI. DEFAULT ORDER

49. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. SETTLEMENT CONFERENCE

50. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

Complaint and Notice of Opportunity for Hearing
Connecticut Oil Recycling Services, LLC, TSCA-01-2018-0008

51. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default but that the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, Respondent should contact Hugh W. Martinez, Senior Enforcement Counsel, at the address provided above, or by calling him at (617) 918-1867 (direct). Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna B. Jerison, Manager
Legal Enforcement Office
Office of Environmental Stewardship
EPA Region 1 – New England

Date: 11/21/17