



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 07 2008

REPLY TO THE ATTENTION OF:

L-8J

Certified Mail
Receipt No. 7001 0320 0006 0182 4585

Mr. Jack Schroeter
9504 Jolliff Bridge Road
Centralia, Illinois 62801

Re: Violations of the Toxic Substances Control Act by Mr. Jack Schroeter

Dear Mr. Schroeter:


TSCA-05-2008-0014
BBW

The U.S. Environmental Protection Agency, Region 5, has filed the enclosed complaint against you under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The complaint alleges three violations of the Polychlorinated Biphenyls (PCB) Disposal Rule found at 40 C.F.R. Part 761 and proposes a total penalty of \$37,659 that was reduced to \$500 after a review of your financial documents.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may wish to request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Richard R. Wagner (C-14J), at (312) 886-7947, or via email at wagner.richard@epa.gov.

Sincerely,


Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:

**Jack Schroeter
9504 Jolliff Bridge Road
Centralia, Illinois 62801**

Respondent

)
) **Proceeding to Assess a Civil Penalty Under**
) **Section 16(a) of the Toxic Substances**
) **Control Act, 15 U.S.C. § 2615(a)**
)
)
)

Docket No. RBDA-05-2008-0014²⁵

ADMINISTRATIVE COMPLAINT

PRELIMINARY STATEMENT

1. This is a civil administrative action instituted by the U.S. Environmental Protection Agency Administrator under 16(a) of the Toxic Substances Control Act (TSCA), and pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the "Administrator's Rules"), 64 Fed. Reg. 40137 (July 23, 1999), codified at 40 C.F.R. Part 22 (July 1, 2006).

2. By lawful delegation, Complainant, the Director of the Land and Chemicals Division, EPA, Region 5, is authorized to issue this Complaint.

3. Respondent is Jack Schroeter.

STATUTORY AND REGULATORY BACKGROUND

4. The Polychlorinated Biphenyls (PCB) Disposal and Marking Regulations were lawfully promulgated by the Administrator, pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use Regulations were lawfully promulgated on May 31, 1979

(44 Fed. Reg. 31514) and incorporated the Disposal and Marking Regulations (“PCB Rules”). The PCB Rules have been since amended, and those applicable to this action are codified at 40 C.F.R. Part 761 (July 1, 2005).

5. The Administrator has defined “PCB” and “PCBs” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.” 40 C.F.R. Part 761.3.

6. Respondent resides on a parcel of property in rural Clinton County, Illinois, near Centralia, Illinois, his address being 9504 Jolliff Bridge Road.

7. That since 1992, Respondent also has owned an additional parcel of property (“the Property”) in rural Clinton County, Illinois, situated across the road from his residence.

8. That Respondent is a “person,” as defined at 40 C.F.R. § 761.3, and is subject to the requirements set forth at 40 C.F.R. Part 761.3.

ALLEGED VIOLATIONS

Count I

Improper Disposal

9. That the allegations of Paragraphs 1 through 8 are incorporated by reference.

10. That 40 C.F.R. § 761.60(a) provides that PCB liquids at concentrations of 50 ppm or greater must be disposed of in an incinerator which complies with § 761.70, or in a chemical waste landfill.

11. That 40 C.F.R. § 761.50(a)(4) provides that “[s]pills and other uncontrolled discharges of PCBs at concentrations of ≥ 50 ppm constitute the disposal of PCBs.”

12. That at the time Respondent purchased the Property, three oil filled electric transformers had been affixed to a wooden platform, above the ground, at a location on the Property.

13. That at some time on or about December 23, 2005, the transformers identified in paragraph 12 were removed from the Property by persons unknown to Complainant.

14. That as of December 23, 2005, two Pyranol name-plated capacitors were attached to the wooden platform identified in paragraph 12.

15. That, on December 23, 2005, and January 11, 2006, an oily substance was observed on the ground beneath the wooden platform identified in paragraph 12.

16. That, on December 23, 2005, and January 11, 2006, oil stains were observed on a concrete slab situated near the wooden platform identified in paragraph 12.

17. That, as of January 11, 2006, the two Pyranol name plated capacitors, identified in paragraph 14, were leaking an oily substance.

18. That samples of oily substance and oil stained materials, identified in paragraphs 15 through 17, revealed PCB concentrations as follows:

- (a) oily substance underneath the wooden platform -- 87 ppm;
- (b) oil accumulated on concrete slab -- 80 ppm;
- (c) wipe sample of oil leaking from the side of one capacitor -- 120,000 ug/100cm².

19. That the source of the oil or oily substance found on the ground beneath the wooden platform, identified in paragraph 12, was either the three transformers, identified in paragraph 12, or the capacitors, identified in paragraph 14.

20. That the source of the oil or oily substance found on the concrete pad, identified in paragraph 16, was either the three transformers, identified in paragraph 12, or the capacitors, identified in paragraph 14.

21. That the PCB oil on the ground beneath the wooden platform, identified in paragraph 15, the PCB oil on the concrete slab near the wooden platform, identified in paragraph 16, and the PCB oil escaping from the two capacitors, identified in paragraph 17, constitute a disposal of PCB liquids.

22. That Respondent's disposal of PCB liquids, identified in this Count, was not in conformance with 40 C.F.R. § 761.60(a), and, consequently, Respondent is in violation of Section 15 of TSCA, 15 U.S.C. § 2614, and subject to being assessed a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count II Improper Storage

23. That the allegations of paragraphs 1 through 22 are incorporated by reference.

24. That 40 C.F.R. § 761.50 provides that any person storing or disposing of PCB waste must do so in accordance with the requirements of 40 C.F.R. §§ 761.50 through 761.79.

25. That 40 C.F.R. § 761.65(b)(2), with exceptions not here applicable, provides that no person may store PCBs and PCB Items designated for disposal in a storage unit other than one approved by the Regional Administrator for commercial storage, pursuant to 40 C.F.R. § 761.65(d), or one consisting of a building meeting the criteria of 40 C.F.R. § 761.65(b), which include an adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items, and an adequate floor and curbing.

26. That 40 C.F.R. § 761.3 defines “PCB Item” to include “any PCB Article.

27. That at the time Respondent purchased the Property, in 1992, until some time when they were removed from the Property by persons unknown to Complainant, the electric transformers, identified in paragraph 12, were not in use and were stored in an area on the Property that did not have roofing, walls, or floors.

28. That at the time Respondent purchased the Property, in 1992, until at least December 23, 2005, the pyranol capacitors, identified in paragraph 14, were not in use and were stored in an area on the Property that did not have roofing, walls, or floors.

29. That Respondent’s place of storage for the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14, was not approved for such storage by the EPA Regional Administrator.

30. That Respondent’s place of storage for the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14, did not meet the requirements of 40 C.F.R. § 761.65(b).

31. That in failing to store the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14, in a storage unit which complied with the criteria of 40 C.F.R. § 761.65(b), or was approved by the EPA Regional Administrator pursuant to 40 C.F.R. § 761.65(d), Respondent failed to comply with 40 C.F.R. § 761.65(b)(2), and, consequently, Respondent is in violation of Section 15 of TSCA, 15 U.S.C. § 2614, and subject to being assessed a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count III

Improper Storage

32. That the allegations of paragraphs 1 through 31 are incorporated by reference.

33. That 40 C.F.R. § 761.50 provides that any person storing or disposing of PCB waste must do so in accordance with the requirements of 40 C.F.R. §§ 761.50 through 761.79.

34. That 40 C.F.R. § 761.65(a)(1) provides that any PCB waste shall be disposed of as required by rule within 1 year from the date it was determined to be PCB waste and the decision was made to dispose of it.

35. That 40 C.F.R. § 761.35(a) provides that a PCB article may be stored for re-use for no more than 5 years after the article was originally removed from use, or 5 years after August 28, 1998, whichever is later.

36. That 40 C.F.R. § 761.3 defines "PCB Article" to include PCB capacitors.

37. That at no time after Respondent purchased the Property, in 1992, was Respondent able to find a buyer for the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14.

38. That Respondent had no use for the electric transformers, identified in Paragraph 12, and the Pyranol capacitors, identified in paragraph 14.

39. That at the time Respondent purchased the Property, and during the entire time that Respondent owned the Property, the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14, were PCB waste, as defined in 40 C.F.R § 761.3.

40. That in failing to timely dispose of the electric transformers, identified in paragraph 12, and the Pyranol capacitors, identified in paragraph 14, Respondent failed to

comply with 40 C.F.R. § 761.65(a), and, consequently, Respondent is in violation of Section 15 of TSCA, 15 U.S.C. § 2614, and subject to being assessed a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

PROPOSED CIVIL PENALTY

In Section 16 of TSCA, 15 U.S.C. § 2615(a), Congress has authorized the Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 15 of TSCA, 15 U.S.C. §15. By the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, Congress requires that the Administrator adjust penalties he assesses for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published by the Administrator at 40 C.F.R. Part 19, the Administrator adjusted the maximum civil penalty he may assess to \$27,500 per day for each violation of TSCA, occurring or continuing on or after January 31, 1997. By later amendment to the same rule, the Administrator further adjusted the maximum civil penalty he may assess to \$32,500 per day for each violation of TSCA, occurring or continuing on or after March 15, 2004. See 69 Fed. Reg. 7124 (February 13, 2004).

Complainant has determined the amount of proposed civil penalty for violations alleged in this Complaint based upon an analysis of relevant evidence known to the Complainant, in consideration of Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), by which Congress requires that the Administrator, in assessing a civil penalty, take into account “the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.” The analysis incorporates

the Administrator's adopted policy, the Polychlorinated Biphenyls (PCB) Penalty Policy; US EPA, April 9, 1990, interpreting the TSCA penalty criteria. A copy of the Policy is available upon request. The Policy of the Administrator provides a consistent method of applying the statutory penalty factors for violations of Section 15 of TSCA, 15 U.S.C. § 2614.

By applying the policy, Complainant preliminarily found the appropriate amounts of penalty to propose for the violations of Respondent alleged in the Complaint are as follows: for Count I violations, \$32,500; for Count II violations, \$3,869; for Count III violations, \$1,290. This would yield a total proposed penalty amount of \$37,659.00.

In pre-filing discussions on this matter with the Administrator's enforcement staff, Respondent raised a claim that it does not have an "ability to pay" the penalty amount Complainant intended to propose, and submitted to the Administrator's enforcement staff financial records relevant to his claim. A financial analyst retained by the Administrator for purposes of addressing such claims has reviewed those records and reported her findings and conclusions to the Administrator's enforcement staff. Given those findings and conclusions, and the Administrator's statutory obligation to consider the penalty criteria "ability to pay," Complainant has concluded that Respondent is able to pay no more than a \$500 penalty, and finds that amount of civil penalty appropriate for the violations alleged in the Complaint.

PAYMENT OF PROPOSED CIVIL PENALTY

Respondent may pay the civil penalty amount proposed by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

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

A copy of the check shall be sent to:

Richard R. Wagner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and

Kendall Moore (LC-8J)
Land and Chemicals Division
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must include a transmittal letter with his payment, identifying in the letter, and on the check, the case name and docket number.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Congress has provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 16(a)(2)(A), that, before the Administrator may issue an order assessing a civil penalty, the Administrator must give written notice to the person to be assessed a civil penalty of the Administrator's proposal to issue the order, and provide the person an opportunity to request a hearing on the order.

Consequently, Respondent has the right to request a hearing to challenge the facts alleged in the Complaint and the amount of civil penalty to be assessed, as proposed in the Complaint.

Any pre-hearing matter and hearing that may occur will be governed in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the

"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000) ("the Administrator's Rules"). A copy of the Administrator's Rules accompanies this Complaint.

If Respondent wishes to avoid being found in default, Respondent must file a written answer to the Complaint with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, within thirty (30) days of your receipt service of this Complaint. 40 C.F.R. § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. 40 C.F.R. § 22.7(a).

Certain rules of the Administrator govern Respondent's obligation in answering the Complaint. 40 C.F.R. § 22.15(b) provides that Respondent's Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or, where Respondent has no knowledge of a particular factual allegation, so state. That rule further provides that Respondent's Answer also must state:

1. **The circumstances or arguments that Respondent alleges constitute the grounds of defense;**
2. **The facts that Respondent disputes;**
3. **The basis on which Respondent disputes the proposed relief, that being the amount of penalty proposed; and**
4. **Whether Respondent requests a hearing.**

40 C.F.R. § 22.15(d) provides that Respondent's failure to admit, deny or explain any material factual allegation in the Compliant will constitute an admission of the allegation. 40 C.F.R. § 22.15(c) provides that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

A copy of the Answer, and any subsequent documents filed by Respondent you in this enforcement action, should be sent to Richard R. Wagner, Senior Attorney, at the address provided on page 9. Wagner may be telephoned at (312) 886-7947.

Notwithstanding any request a respondent may make for a hearing, if a respondent fails to file an answer within thirty (30) days of the respondent's receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. § 22.15(a); 40 C.F.R. § 22.17. Issuance of a Default Order will constitute a binding admission by the respondent of all facts alleged in the Complaint and a waiver of the respondent's right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 C.F.R. § 22.27(c). In addition, the default penalty is subject to the provisions relating to the imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA will impose a late payment handling charge of \$15.00 after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, EPA will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

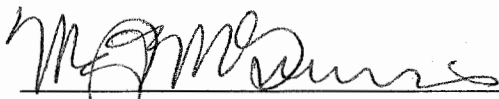
SETTLEMENT CONFERENCE:

Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference in this matter, the request should be submitted to Kendall Moore, at the address provided on page 9, or telephone him at (312) 353-1147.

A request for an informal settlement conference does not extend the 30-day period allowed for filing a written Answer and Request for Hearing. Respondent may pursue an informal conference notwithstanding the filing of an Answer and Request for Hearing.

EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order signed by both parties, executed by the EPA, Region 5, Administrator, and filed with the Region 5 Hearing Clerk..

Dated this 1st day of July, 2008.



Margaret M. Guerriero
Director
Land and Chemicals Division

Complaint Docket No. TSCA-05-2008-001422.

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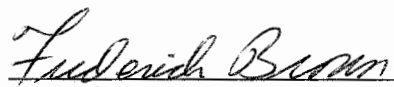
CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Complaint in resolution of the civil administrative action involving Jack Schroeter, was filed on July 7, 2008, with the Regional Hearing Clerk (E-13J), U.E. Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 4585, a copy of the original to the Respondents:

Jack Schroeter
9504 Jolliff Bridge Road
Centralia, Illinois 62801

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Richard R. Wagner, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. TSCA-05-2008-0014^{2a}

RECEIVED
REGIONAL HEARING CLERK
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