

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

FILED

2013 APR 30 PM 1:52

U.S. EPA REGION IX
HEARING CLERK

In the Matter of:)	Docket No. TSCA-09-2013-0004;
)	
)	
Veolia Environmental Services)	COMPLAINT AND NOTICE OF
Technical Solutions LLC,)	OPPORTUNITY FOR HEARING
)	
Respondent)	
)	

PRELIMINARY STATEMENT

This is a civil administrative action brought pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Complainant is the Director of the Enforcement Division, United States Environmental Protection Agency ("EPA"), Region IX, who has been duly delegated the authority to bring this action under TSCA. Respondent is Veolia Environmental Services Technical Solutions LLC ("Respondent"), a Delaware corporation doing business in Phoenix, Arizona.

Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA has promulgated comprehensive regulations governing the use, manufacture, processing, distribution, and disposal of polychlorinated biphenyls ("PCBs") at 40 C.F.R. Part 761.

This Complaint serves as notice that Complainant has reason to believe that Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614, by violating the regulations governing PCBs at 40 C.F.R. Part 761.

GENERAL ALLEGATIONS

1. It shall be unlawful for any person to (1) fail or refuse to comply with . . . (C) any rule promulgated or order issued under section 2604 or 2605 [section 6 of TSCA] of this title. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
2. "PCB Container" means "any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs." 40 C.F.R. § 761.3.
3. "PCB-Contaminated" means "a non-liquid material containing PCBs at concentrations \geq 50 ppm [parts per million] but $<$ 500 ppm; a liquid material containing PCBs at concentrations \geq 50 ppm but $<$ 500 ppm or where insufficient liquid material is available for analysis, a non-porous surface having a surface concentration $>$ 10 $\mu\text{g}/100 \text{ cm}^2$ but $<$ 100 $\mu\text{g}/100 \text{ cm}^2$, measured by a standard wipe test as defined in § 761.123." 40 C.F.R. § 761.3.
4. "PCB Item" means "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs." 40 C.F.R. § 761.3.
5. "Person" means "any natural or judicial person, including any individual, corporation, partnership or association..." 40 C.F.R. § 761.3.
6. Respondent is a corporation, and therefore a "person" as that term is defined by 40 C.F.R. § 761.3.
7. Respondent owns and operates a facility located at 5736 W. Jefferson Street, Phoenix, Arizona 85043 (the "Facility").

8. At all times relevant to this Complaint, Respondent was engaged in hazardous, non-hazardous, and industrial waste disposal and recycling at the Facility, including such activities involving PCBs.
9. On or about March 17, 2008 and on or about September 16, 2010, EPA Region IX inspectors conducted inspections at the Facility, in part, for the purpose of determining Respondent's compliance with 40 C.F.R. Part 761.

ALLEGED VIOLATIONS

COUNT I - Continued Use of PCB-Contaminated Structure (40 C.F.R. § 761.30(u)(1))

10. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set forth herein.
11. No person may use any PCB or PCB Item, regardless of concentration, in any manner other than in a totally enclosed manner within the United States, unless authorized under 40 C.F.R. § 761.30 or excepted under 40 C.F.R. § 761.20(a). 40 C.F.R. § 761.20(a); Section 6(e)(2)(A) of TSCA, 15 U.S.C. § 2605(e)(2)(A).
12. "Totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentrations of PCBs. 40 C.F.R. § 761.3.
13. Pursuant to Section 6(e)(2)(B) of TSCA, 15 U.S.C. § 2605(e)(2)(B), 40 C.F.R. § 761.30 authorizes certain non-totally enclosed PCB activities. 40 C.F.R. § 761.30.
14. Any person may use equipment, structures, other non-liquid or liquid materials that were contaminated with PCBs during manufacture, use, servicing, or because of spills from, or proximity to PCBs \geq 50 ppm, including those not otherwise authorized for use under this part, provided that (1) the materials were decontaminated in accordance with (a) a TSCA PCB disposal approval; (b) 40 C.F.R. § 761.79; or (c) applicable EPA PCB spill cleanup

- policies. Materials that were not previously decontaminated can also be used if they meet the applicable decontamination standard in 40 C.F.R. § 761.79(b). 40 C.F.R. § 761.30(u)(1).
15. Provisions that apply to PCBs at concentrations of ≥ 50 ppm to < 500 ppm apply also to contaminated surfaces of $10 \mu\text{g}/100 \text{ cm}^2$ to $\leq 100 \mu\text{g}/100 \text{ cm}^2$. 40 C.F.R. § 761.1(b)(3).
 16. On or about March 17, 2008, an EPA Region IX inspector and a representative of Respondent took side-by-side wipe samples from Building 3 at the Facility.
 17. On or about March 25, 2008, Respondent received wipe sample results from its sampling showing PCB concentrations of $\geq 10 \mu\text{g}/100 \text{ cm}^2$ [50 ppm], specifically $11 \mu\text{g}/100 \text{ cm}^2$ and $15 \mu\text{g}/100 \text{ cm}^2$.
 18. On or about April 4, 2008, Respondent began decontamination of Building 3.
 19. From on or about March 25, 2008 to on or about April 4, 2008, Building 3 was "PCB-contaminated," as that term is defined by 40 C.F.R. § 761.3.
 20. From on or about March 25, 2008 to on or about April 4, 2008, Respondent used Building 3 at the Facility without decontaminating it.
 21. Respondent's use of Building 3 at the Facility from on or about March 25, 2008 to on or about April 4, 2008 without decontaminating it constitutes a violation of 40 C.F.R. §§ 761.30(u)(1) and 761.20(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 11 days.

COUNT II - Continued Use of PCB-Contaminated Structure (40 C.F.R. § 761.30(u)(1))

22. Paragraphs 1 through 21 above are hereby incorporated by reference as if fully set forth herein.
23. On or about March 17, 2008, an EPA Region IX inspector and a representative of Respondent took side-by-side wipe samples from Building 4 at the Facility.

24. On or about March 25, 2008, Respondent received wipe sample results from its sampling showing a PCB concentration of $\geq 10 \mu\text{g}/100 \text{ cm}^2$ [50 ppm], specifically $19 \mu\text{g}/100 \text{ cm}^2$.
25. On or about April 4, 2008, Respondent began decontamination of Building 4.
26. From on or about March 25, 2008 to on or about April 4, 2008, Building 4 was "PCB-contaminated," as that term is defined by 40 C.F.R. § 761.3.
27. From on or about March 25, 2008 to on or about April 4, 2008, Respondent used Building 4 at the Facility without decontaminating it.
28. Respondent's use of Building 4 at the Facility from on or about March 25, 2008 to on or about April 4, 2008 without decontaminating it constitutes a violation of 40 C.F.R. §§ 761.30(u)(1) and 761.20(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 11 days.

COUNT III – Improper Disposal of PCBs (40 C.F.R. § 761.50(a)(4))

29. Paragraphs 1 through 28 above are hereby incorporated by reference as if fully set forth herein.
30. Any person storing or disposing of PCB waste must do so in accordance with Subpart D of 40 C.F.R. Part 761. 40 C.F.R. § 761.50(a).
31. "Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items. 40 C.F.R. § 761.3.
32. Spills and other uncontrolled discharges of PCBs at concentrations of ≥ 50 ppm constitute the disposal of PCBs. 40 CFR § 761.50(a)(4).

33. On or about September 16, 2010, an EPA Region IX inspector took surface wipe samples from the concrete area adjacent to Building 2 at the Facility.
34. On or about November 8, 2010, EPA Region IX provided the wipe sample results to Respondent showing a PCB concentration of $>10 \mu\text{g}/100 \text{ cm}^2$ and therefore $> 50 \text{ ppm}$, specifically $150 \mu\text{g}/100 \text{ cm}^2$.
35. On or about November 13, 2010, Respondent began clean-up of the concrete area adjacent to Building 2 at the Facility.
36. The discharge of PCBs at concentrations of $> 50 \text{ ppm}$ on the concrete area adjacent to Building 2 at the Facility constitutes "disposal" of PCBs, as that term is defined at 40 C.F.R. § 761.3 and 40 C.F.R. § 761.50(a)(4).
37. The disposal of PCBs on the concrete area adjacent to Building 2 at the Facility was not in accordance with Subpart D of 40 C.F.R. Part 761.
38. Respondent's disposal of PCBs at concentrations of $> 50 \text{ ppm}$ on the concrete area adjacent to Building 2 at the Facility from on or about November 8, 2010 to on or about November 13, 2010 constitutes a violation of 40 C.F.R. § 761.50(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), lasting 6 days.

COUNT IV - Failure to Indicate the Removal from Service Date (40 C.F.R. § 761.65(c)(8))

39. Paragraphs 1 through 38 above are hereby incorporated by reference as if fully set forth herein.
40. PCB Items with PCB concentrations of 50 ppm or greater must be dated on the item when they are removed from service for disposal. The storage shall be managed so that the PCB Items can be located by this date. 40 C.F.R. § 761.65(c)(8).
41. On or about March 17, 2008, Respondent stored at the Facility two metal roll-off containers filled with PCB ballasts that had been removed from service for disposal.

42. The two metal roll-off containers filled with the ballasts are each a "PCB Item" as that term is defined at 40 C.F.R. § 761.3.
43. Each of the two metal roll-off containers filled with the ballasts contained PCBs with a concentration of 50 ppm or greater.
44. On or about March 17, 2008, Respondent had failed to put the date of removal from service for disposal on the two metal roll-off containers filled with the ballasts.
45. Respondent's failure to put the removal from service for disposal date on these metal roll-off containers constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT V - Failure to Indicate the Removal from Service Date (40 C.F.R. § 761.65(c)(8))

46. Paragraphs 1 through 45 above are hereby incorporated by reference as if fully set forth herein.
47. On or about September 16, 2010, Respondent stored at the Facility two metal roll-off containers filled with PCB ballasts that had been removed from service for disposal.
48. The two metal roll-off containers filled with the ballasts are each a "PCB Item" as that term is defined at 40 C.F.R. § 761.3.
49. Each of the two metal roll-off containers filled with the ballasts contained PCBs with a concentration of 50 ppm or greater.
50. On or about September 16, 2010, Respondent had failed to put the date of removal from service for disposal on the two metal roll-off containers filled with the ballasts.
51. Respondent's failure to put the removal from service for disposal date on these metal roll-off containers constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT VI - Failure to Mark PCB Containers (40 C.F.R. § 761.40(a)(1))

52. Paragraphs 1 through 51 above are hereby incorporated by reference as if fully set forth herein.
53. PCB Containers containing PCBs in concentrations of 50 to 500 ppm must be marked with the M_L mark as described in 40 C.F.R. § 761.45(a). 40 C.F.R. §§ 761.40(a)(1) and (e).
54. On or about March 17, 2008, Respondent had a bucket and two PCB decontamination bath tanks that collectively contained approximately 1300 gallons of liquid with PCB concentrations of > 50 ppm in Building 2 at the Facility.
55. The bucket and the two PCB decontamination bath tanks are each a "PCB Container," as that term is defined at 40 C.F.R. § 761.3.
56. On or about March 17, 2008, the bucket and the two PCB decontamination bath tanks were not marked with the M_L mark as described in § 761.45(a).
57. Respondent's failure to mark the bucket and the two PCB decontamination bath tanks in Building 2 with the M_L mark as described in § 761.45(a) constitutes a violation of 40 C.F.R. §§761.40(a)(1) and (e) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT VII - Failure to Mark PCB Containers (40 C.F.R. § 761.40(a)(1))

58. Paragraphs 1 through 57 above are hereby incorporated by reference as if fully set forth herein.
59. On or about September 16, 2010, Respondent had a vacuum that it used to clean up its PCB storage and decommissioning area in the PCB storage and decommissioning area of Building 2 at the Facility.

60. The vacuum is a "PCB Container," as that term is defined at 40 C.F.R. § 761.3, that contained PCBs in concentrations of ≥ 50 ppm.
61. On or about September 16, 2010, the vacuum was not marked with the M_L mark as described in § 761.45(a).
62. Respondent's failure to mark the vacuum in Building 2 with the M_L mark as described in § 761.45(a) constitutes a violation of 40 C.F.R. §§ 761.40(a)(1) and (e) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

PROPOSED CIVIL PENALTY

Section 16(a) (1) of TSCA, 15 U.S.C. § 2615(a)(1), authorizes the EPA Administrator to assess a civil penalty not to exceed \$25,000 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614. This statutory civil penalty has been raised to \$32,500 per day for each violation that occurred after March 15, 2004 but on or before January 12, 2009 and to \$37,500 per day for each violation that occurred after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19.

Based upon the nature, circumstances, extent, and gravity of the violations alleged above 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, as set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and EPA's Polychlorinated Biphenyls (PCB) Penalty Policy dated April 9, 1990 ("PCB Penalty Policy"), Complainant requests that the Administrator assess against Respondent a civil administrative penalty of up to \$32,500 for each violation that occurred before January 12, 2009 and up to

\$37,500 for each violation that occurred after January 12, 2009. A copy of the PCB Penalty Policy is enclosed with this Complaint.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Administrative Hearing

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), you have the right to request a formal hearing in this matter. Any hearing requested will be conducted in accordance with 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/Termination or Suspension of Permits ("Consolidated Rules of Practice") at 40 C.F.R. Part 22. The Consolidated Rules of Practice govern these proceedings. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

In addition, please send a copy of the Answer and all other documents that you file in this action to:

Carol Bussey
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Ms. Bussey is the attorney assigned to represent EPA in this matter. Her telephone number is (415) 972-3950.

You are further informed that the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

Informal Settlement Conference

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Carol Bussey, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.

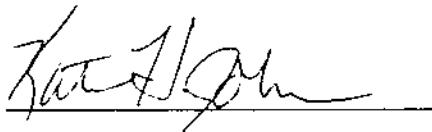
Alternative Dispute Resolution

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. §§ 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

Consent Agreement and Final Order

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties would be binding as to all terms and conditions specified therein when the Regional Judicial Officer signs the Final Order.

Dated at San Francisco, California on this 30th day of April, 2013



Kathleen H. Johnson
Director
Enforcement Division
USEPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the PCB Penalty Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Veolia ES Technical Solutions, LLC
C/O CT Corporation System
2390 E. Camelback Road
Phoenix, AZ 85016
Certified Mail No. 7000 1670 0009 3120 7089

And an additional copy was sent regular mail to:

Greig R. Siedor
Chief Legal Officer
Veolia ES Technical Solutions, LLC
P.O. Box 1238
Sheffield, MA 01257

Dated: 4/30/13

By: Chris Rollins

Enforcement Division
U.S. Environmental Protection Agency, Region IX