



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

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2011 SEP 23 A 9:09

September 23, 2011

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**Via Hand Delivery**

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

RE: In the Matter of: ASNAT Realty, LLC and Evergreen Power, LLC  
Docket No. TSCA-01-2011-00125

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Complaint and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin  
Enforcement Counsel

Enclosures

cc: Jacqueline Cohen  
Eliyahu Kaufman

In the Matter of: ASNAT Realty, LLC and Evergreen Power, LLC  
Docket No. TSCA-01-2011-0125

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing Complaint to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,  
By Hand Delivery:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

One copy, By Certified Mail,  
Return Receipt Requested:

Jacqueline Cohen  
Business Manager  
ASNAT Realty, LLC and Evergreen Power,  
LLC  
220-46 73<sup>rd</sup> Avenue  
Bayside, NY 11364

Eliyahu Kaufman  
Owner  
ASNAT Realty, LLC and Evergreen Power,  
LLC  
6722 Hyacinth Lane  
Dallas, Texas 75252

Dated: \_\_\_\_\_

9/23/11



William D. Chin  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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2011 SEP 23 A 9:09

In the Matter of: )  
 )  
ASNAT Realty, LLC )  
220-46 73<sup>rd</sup> Avenue )  
Bayside, NY 11364-2624 )  
 )  
and )  
 )  
Evergreen Power, LLC )  
220-46 73<sup>rd</sup> Avenue )  
Bayside, NY 11364-2624 )  
 )  
 )  
Respondents. )  
 )  
\_\_\_\_\_ )

Docket No. EPA ORC  
TSCA-01-2011-0125 OFFICE OF  
REGIONAL HEARING CLERK  
**COMPLAINT AND  
OPPORTUNITY FOR  
HEARING**

**COMPLAINT**

**I. Introduction**

1. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") to ASNAT Realty, LLC ("ASNAT") and Evergreen Power, LLC ("Evergreen") (collectively, "Respondents") under 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.

2. This Complaint notifies Respondents that Complainant intends to assess penalties for alleged violations of the federal regulations entitled, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The alleged violations involve omissions and inaccuracies in a waste manifest for waste containing PCBs and the failure to notify EPA of PCB waste

activities. The Notice of Opportunity for Hearing describes Respondents' option to file an Answer to the Complaint and to request a formal hearing.

## **II. Statutory and Regulatory Authority**

3. Complainant takes this action under the authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. Part 761.

4. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA.

5. The PCB Regulations at 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. 2605(e).

6. The PCB Regulations establish "prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." See 40 C.F.R. § 761.1(a).

7. The PCB Regulations define "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance." See 40 C.F.R. § 761.3.

8. Subpart K of 40 C.F.R. Part 761 sets forth the requirements for PCB waste disposal records and reports, including the requirements for storers and generators of PCB waste to have an EPA identification number, to notify EPA of PCB waste activity, and to properly prepare a PCB waste manifest. See 40 C.F.R. §§ 761.202, 205, and 207.

## **III. Background**

9. Respondents are limited liability companies established under the laws of the State of Delaware.

10. Respondents own and operate a site located at 510 Grand Avenue, New Haven, Connecticut (the "Site"). The Site was built in the 1880s and is the former location of a power

plant (known as “English Station”) that ceased operations in 1992. The Site consists of approximately 5.3 acres of land in the shape of a peninsula that juts into the mouth of the Mill River in New Haven. There are two large building structures on the Site (including the former power plant building). Since the closing of the power plant in 1992, the Site has remained idle due to the need to bring soil and groundwater on the Site into compliance with applicable environmental laws before the Site can be reused. The United Illuminating Company (“UI”), which operated the power station, sold the Site to Quinnipiac Energy, LLC (“Quinnipiac”) in August 2000. Respondents subsequently purchased the Site from Quinnipiac in December 2006.

11. At all times relevant to this CAFO, Respondents are "persons," as defined at 40 C.F.R. § 761.3, and are subject to the prohibitions set forth in TSCA and the PCB Regulations.

12. On or about January 20, 2011, United Industrial Services (“UIS”) notified the Connecticut Department of Environmental Protection<sup>1</sup> (“CT DEP”) of a shipment of approximately 4,300 gallons of PCB-contaminated waste transformer oil that had been received by one of its subsidiaries, United Oil Recovery (“UOR”).

13. The waste transformer oil had been transported to UOR for offsite disposal at the request of ASNAT via a nonhazardous waste manifest (# UIS A 0340518), dated January 19, 2011. The manifest identified the waste as “Non TSCA Transformer Oil (PCB = 26-49 ppm)” and identified the Site as the site of generation of the waste oil.

14. Upon receipt of the waste transformer oil, UOR sampled the oil and the analysis report, dated January 20, 2011, determined the PCB concentration in the oil to be greater than 99 percent (i.e., 990,000 parts per million (“ppm”)). UOR, which is not authorized to dispose of

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<sup>1</sup> Effective July 1, 2011, the CT DEP was merged with several other state agencies and is now known as the Connecticut Department of Energy and Environmental Protection (“CT DEEP”).

PCBs, rejected the PCB-contaminated waste transformer oil, which was eventually sent to an authorized PCB disposal facility in Texas.

15. On or about January 20, 2011, CT DEP notified Complainant of the information described above in Paragraphs 12-14.

16. Complainant also received a copy of an analytical report, dated December 13, 2010 (the "December Report"), that had been prepared by Connecticut Testing Laboratories, Inc. of Meriden, CT for its client, ASNAT.

17. The December Report identified eight transformers at the Site for which oil samples were collected and analyzed for PCBs. For three of the transformers (T-2, T-3, and T-4), the analysis did not detect any PCBs in the samples. [The amount of waste oil generated from Transformers T-2, T-3, and T-4 totaled 2,000 gallons.] For five of the transformers (T-5, T-6, T-7, T-8, and T-9) however, the analysis of the oils samples showed PCB concentrations of 44, 35, 44, 44, and 28 percent respectively (i.e., 440,000 ppm, 350,000 ppm, 440,000 ppm, 440,000 ppm, and 280,000 ppm respectively). [The amount of waste oil generated from Transformers T-5, T-6, T-7, T-8, and T-9 totaled 2,300 gallons.]

18. At all times relevant to this CAFO, Transformers T-5, T-6, T-7, T-8, and T-9 are "PCB Transformers," "PCB Articles," and "PCB Items," as defined at 40 C.F.R. § 761.3.

19. At all times relevant to this CAFO, the 2,300 gallons of PCB-contaminated waste transformer oil from Transformers T-5, T-6, T-7, T-8, and T-9, described above in Paragraphs 12-17, is "PCB waste," as defined at 40 C.F.R. § 761.3.

20. At all times relevant to this CAFO, Respondents are "generators of PCB waste," as defined at 40 C.F.R. § 761.3.

21. On March 18, 2011, Complainant issued a TSCA subpoena (the “Subpoena”) to Respondents requesting, among other things, a list of all electrical equipment and all liquid-filled non-electrical equipment located at the Site.

22. On March 22, 2011, CT DEP conducted a TSCA/PCB compliance inspection of the Site (“CT DEP Inspection”).

23. On May 17, 2011, GeoQuest (“GQ”), on behalf of Respondents, submitted a partial response to the Subpoena (the “May 2011 Response”). The May 2011 Response included an inventory of the electrical and liquid-filled non-electrical equipment that was located on the exterior portions of the Site.<sup>2</sup> In the May 2011 Response, GeoQuest stated that electrical and liquid-filled non-electrical equipment located at the Site had not been used since UI ceased operations at the power plant (in 1992).

24. Based on the CT DEP Inspection, the May 2011 Response, and other information provided by Respondents, CT DEP, and other sources, Complainant has determined that Respondents have violated the PCB Regulations and Section 15 of TSCA, as set forth below.

**COUNT I - Omissions and Inaccuracies on Waste Manifest (# UIS A 0340518)**

25. Complainant realleges and incorporates by reference Paragraphs 1 through 24.

26. Pursuant to 40 C.F.R. § 761.207(a), a generator of PCB waste who relinquishes control of that waste by offering it for transport for off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22.

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<sup>2</sup> Due to the “closing” of the building located on the Site by the Connecticut Department of Public Health [pending an assessment of asbestos containing materials (“ACM”) in the building and abatement of any confirmed ACM], GQ stated that it was not able to provide Complainant with a list of electrical and non-electrical equipment located inside the building.

27. Pursuant to 40 C.F.R. § 761.207(a)(1), the waste manifest must specify, among other things: the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

28. As described above in Paragraphs 12-17, Respondents "relinquishe[d] control" over PCB waste (i.e., the 2,300 gallons of PCB-contaminated waste transformer oil) by "offering [it] for transport" for "offsite disposal."

29. As described above in Paragraphs 12-17, Respondents failed to indicate on Nonhazardous Waste Manifest # UIS A 0340518 (a) that the 2,300 gallons of waste transformer oil contained PCBs; (b) the earliest date of removal of the PCB-contaminated waste transformer oil from service for disposal; and (c) the weight in kilograms of the PCB-contaminated waste transformer oil.

30. Accordingly, Respondents' failure to comply with the PCB waste manifesting requirements for Nonhazardous Waste Manifest # UIS A 0340518 constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA.

### **Count 2 – Failure to Notify EPA of PCB Waste Activities**

31. Complainant realleges and incorporates by reference Paragraphs 1 through 30.

32. Pursuant to 40 C.F.R. § 761.202(b)(1)(i), after June 4, 1990, a generator of PCB waste must not process, store, dispose of, transport, or offer for transportation PCB waste without having received an EPA identification number.

33. Pursuant to 40 C.F.R. § 761.202(a), any generator, commercial storer, transporter, or disposer of PCB waste who is required to have an EPA identification number must notify EPA of its PCB waste handling activities in accordance with 40 C.F.R. § 761.205. Upon receiving the

notification form, EPA will assign an EPA identification number to facilities that do not have one.

34. Pursuant to 40 C.F.R. § 761.205(a)(2), all generators (unless exempt under 40 C.F.R. § 761.205(c)(1)) of PCB waste who first engage in PCB waste handling activities after February 5, 1990, must notify EPA of their PCB waste handling activities prior to engaging in such activities.

35. Respondents first engaged in PCB waste handling activities at the Site beginning at least sometime in or after December 2006.

36. At all times relevant to this CAFO, Respondents did not qualify for the exemption under 40 C.F.R. § 761.205(c)(1) from notifying EPA of their PCB waste handling activities prior to engaging such activities.

37. Accordingly, Respondents were required to notify EPA of their PCB waste handling activities and to have an EPA identification number beginning at least sometime in or after December 2006.

38. Respondents stored, disposed of, or offered for transportation PCB waste at the Site beginning at least sometime in or after December 2006 until at least January 2011 without notifying EPA of their PCB waste handling activities and receiving an EPA identification number.

39. Accordingly, Respondents' failure to notify EPA of their PCB waste handling activities at the Site and to receive an EPA identification number, and their storage of PCB waste at the Site without having received an EPA identification number constitutes violations of 40 C.F.R. §§ 761.202 and 205 and Section 15 of TSCA that lasted from at least sometime in or after December 2006 until at least January 2011.

#### **IV. Proposed Civil Penalty**

40. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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 of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after January 12, 2009 are subject to up to \$32,500 per day of violation. Violations that occur on or after January 13, 2009 are subject to penalties up to \$37,500 per day per violation.

41. Complainant will calculate any proposed penalty using the penalty assessment criteria of Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), by taking into consideration the nature, circumstances, extent, and gravity of the violations and, with respect to Respondents, their ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, their degree of culpability, and such other matters as justice may require.

42. In applying the penalty assessment criteria, Complainant will use the approach outlined in EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy" (the "PCB Penalty Policy"), dated April 9, 1990, a copy of which is included with this Complaint. See EPA's "Notice of Availability of Polychlorinated Biphenyls Penalty Policy," 55 Fed. Reg. 13955 (April 13, 1990). A revised penalty matrix, inserted into the PCB Penalty Policy at page 9-C, takes into account inflation adjustments for violations occurring after January 12, 2009.

43. Any proposed civil penalty will be developed based upon the best information available to Complainant at this time and may be adjusted if Respondents establish bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty by providing Complainant with adequate financial documentation.

44. By this Complaint, Complainant seeks to assess civil penalties against Respondents of up to \$37,500 per day per violation for violations occurring after January 12, 2009, as set forth below:

Count 1 (Improper Waste Manifest): One violation for Respondents' failure to comply with the PCB waste manifesting requirements for Nonhazardous Waste Manifest # UIS A 0340518. The failure to properly identify PCBs in waste shipments presents a great risk of harm to human health and the environment. The shipment of PCB-contaminated waste to a facility that is not authorized to dispose of PCBs may result in the release of PCBs into the environment and/or the exposure of humans to PCBs. Once in the environment, PCBs do not readily break down and therefore may remain for long periods of time cycling between air, water, and soil. In addition, PCBs have been demonstrated to cause cancer, as well as a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system.

Count 2 (Failure to Notify): At least one violation for Respondents' failure to notify EPA of its PCB waste activities and to obtain an EPA identification number, and for Respondents' storage of PCB waste without having an EPA identification number. The failure to notify EPA of PCB waste handling activities substantially undermines EPA's ability to identify, track, and regulate sources of PCBs.

#### **V. Notice of Opportunity to Request a Hearing**

45. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondents have the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, a copy of which is enclosed with this Complaint. Any request for a hearing

must be included in Respondents' written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this complaint.

46. In its Answer, Respondents may also: (1) dispute any material fact in this Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondents intend to place at issue.

47. The original and one copy of the Answer, as well as a copy of all other documents which Respondents file in this action, must be sent to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA 18-1  
Boston, Massachusetts 02109-3912

48. Respondents should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to William D. Chin, the attorney assigned to represent EPA, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

William D. Chin  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: OES 04-4

Boston, Massachusetts 02109-3912  
Tel: 617-918-1728

49. If Respondents fail to file a timely Answer to this Complaint, they may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing. An order may then be issued making Respondents liable for the full amount of any penalty proposed in this Complaint.

#### **VI. SETTLEMENT CONFERENCE**

50. Whether or not a hearing is requested upon the filing of an Answer, Respondents may confer informally with EPA concerning the alleged violations and/or the amount of any penalty. Such a conference provides Respondents with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter.

Where appropriate, the amount of any penalty may be modified to reflect any settlement agreement reached at such a conference.

51. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondents or their representative(s) should contact William Chin, Enforcement Counsel, at (617) 918-1728.

  
\_\_\_\_\_  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

9/14/11  
\_\_\_\_\_  
Date