



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100

BOSTON, MA 02109-3912

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September 28, 2010

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: The Connecticut Light and Power Company
Docket No. TSCA-01-2010-0049

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: Jeffrey D. Butler (c/o Charles J. Nicol)

In the Matter of: The Connecticut Light and Power Company

Docket No. TSCA-01-2010-0049

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:

Jeffrey D. Butler
President and Chief Operating Officer
The Connecticut Light and Power Company
c/o Charles J. Nicol
Senior Counsel
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270

Dated: _____

9/28/10

William D. Chin

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**

In re:)	
)	
The Connecticut Light and Power Company)	
107 Selden Street)	
Berlin, Connecticut 06037)	Docket No. TSCA-01-2010-0049
)	
Respondent)	COMPLAINT
)	
Proceeding under Section 16(a))	
of the Toxic Substances Control)	
Act, 15 U.S.C. § 2615(a).)	

I. STATUTORY AND REGULATORY BASIS

1. Complainant, the United States Environmental Protection Agency, Region I ("EPA"), issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") to the Connecticut Light and Power Company ("CL&P" or "Respondent") 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. This Complaint notifies Respondent that EPA intends to assess penalties for an alleged violation 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 violation involves omissions and inaccuracies in a 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. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Section 15(1)(C) makes it

unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA.

3. 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).

4. 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." See 40 C.F.R. § 761.1(a).

5. 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.

6. Forty C.F.R § 761.207 sets forth the general requirements for PCB waste manifests.

II. GENERAL ALLEGATIONS

7. Respondent is a corporation incorporated under the laws of the State of Connecticut with a principal place of business located at 107 Selden Street in Berlin, Connecticut and is a subsidiary of Northeast Utilities.

8. At all times relevant to this Complaint, Respondent is a "person" as defined in 40 C.F.R. § 761.3.

9. Sometime in September 2009, Respondent hired Moran Environmental Recovery ("MER") to remove waste from three manholes located in Springfield, Massachusetts and four vaults located in Stamford, Connecticut.

10. On or about September 21-23, 2009, MER, on behalf of Respondent, prepared separate waste manifests (#005814382JJK, #005814381JJK, #005814047JJK, and

#003959301JJK) for each of the four vaults located in Stamford, Connecticut and one single waste manifest (#005814341JJK) for the three manholes located in Springfield, Massachusetts.

11. Waste manifests #005814382JJK, #005814381JJK, #005814047JJK, and #003959301JJK all listed Respondent as the "generator" of the waste. [Waste manifest #005814341JJK identified an entity related to Respondent as the "generator" of the waste.]

12. Waste manifests #005814382JJK, #005814381JJK, #005814047JJK, #003959301JJK, and #005814341JJK listed the waste as "Hazardous Waste Liquid, N.O.S. (Lead)." None of these waste manifests identified the waste as containing PCBs.

13. Between September 21, 2009 and September 23, 2009, MER removed the waste from the vaults and manholes using a pressure washer and vacuum truck. MER consolidated the waste (collectively "the Waste") into a single MER transport tanker truck. The Waste weighed approximately 5,320 pounds.

14. On September 24, 2009, MER transported the Waste to the Clean Harbors of Connecticut ("Clean Harbors") facility in Bristol, Connecticut. MER off-loaded the Waste into a mix tank. The system was a closed loop system and no Waste was discharged.

15. On or about September 24, 2009, Clean Harbors collected a sample of the Waste for analysis but in its initial review of the sample results did not identify the presence of PCBs in the Waste. On the same day, Clean Harbors re-reviewed the sample results of the Waste and subsequently identified PCB contamination in the Waste. Clean Harbors then sent another sample of the Waste to Phoenix Lab, a third party laboratory, for analysis. Subsequently, Phoenix Lab found a PCB concentration of 48 parts per million ("ppm") in the Waste.

16. On or about September 24, 2009, Clean Harbors reported the PCB contamination in the Waste to MER. MER immediately quarantined their transport truck and eventually decontaminated it on or about September 26, 2009.

17. Sometime between September 25, 2009 and October 6, 2009, Respondent identified the likely source of PCBs as Vault 473, located at 300 Main Street in Stamford, Connecticut. The vault contained an electrical transformer with 111 ppm PCBs.

18. The corresponding waste manifest, #005814381JJK, did not identify the waste in Vault 473 as PCB waste, did not include the earliest date of removal from service for disposal, and did not list the weight in kilograms as required by 40 C.F.R. § 761.207.

19. On October 6, 2009, Connecticut Department of Environmental Protection's ("CT DEP") PCB Program received a complaint from the CT DEP Waste Engineering and Enforcement Division regarding the events described above in Paragraphs 7 through 18.

20. On October 16, 2009, the CT DEP PCB Program conducted an inspection regarding the events described above in Paragraphs 7 through 18 ("the Inspection") at Clean Harbors' Bristol, CT facility.

21. Based upon information provided by Respondent, MER, Clean Harbors, and the Inspection, Complainant has determined that Respondent violated the PCB Regulations and Section 15 of TSCA, as set forth below.

III. VIOLATIONS

COUNT I - Omissions and Inaccuracies on Hazardous Waste Manifest #005814381JJK

22. Complainant realleges and incorporates by reference Paragraphs 1 through 21.

23. 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.

24. 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.

25. At all times relevant to this Complaint, Respondent is a "generator," as that term is defined in 40 C.F.R. § 761.3.

26. At all times relevant to this Complaint, the Waste is a "PCB waste" as that term is defined in 40 C.F.R. § 761.3.

27. As described above in Paragraphs 9 through 14, Respondent "relinquish[ed] control" over PCB waste by "offering [it] for transport" for "offsite disposal."

28. As described above in Paragraphs 9 through 18, Waste manifest #005814381JJK failed to indicate (a) that the Waste contained PCBs; (b) the weight in kilograms of the Waste; and (c) the earliest date of removal of the PCBs from service for disposal.

29. Accordingly, Respondent's failure to comply with the PCB waste manifesting requirements for Waste manifest #005814381JJK constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

IV. PROPOSED CIVIL PENALTY

30. 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.

31. Complainant has calculated a 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 the Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require.

32. In applying the penalty assessment criteria, Complainant has used 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.

33. Count 1: A penalty of \$24,080 is proposed for Respondent's manifesting violation. For purposes of calculating the gravity-based penalty, the violation is classified as non-disposal violation, involving a "significant extent" of PCBs, and a "high range level 1" assessment for the "circumstances" factor (appropriate for a "major manifesting" violation). The resulting initial gravity-based amount from the revised matrix on page 9-C is \$24,080. No further adjustments are proposed to the base penalty.

34. The proposed penalty was developed based upon the best information available to Complainant at this time and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has 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 Respondent's 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.

36. In its Answer, Respondent 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 Respondent has any knowledge. If Respondent has 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 Respondent intends to place at issue.

37. The original and one copy of the Answer, as well as a copy of all other documents which the Respondent files 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

38. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files 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

39. If Respondent fails to file a timely Answer to this Complaint, it 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 Respondent liable for the full amount of any penalty proposed in this Complaint.

VI. SETTLEMENT CONFERENCE

40. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations and/or the amount of any penalty. Such a conference provides Respondent 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.

41. 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, Respondent or its representative should contact William Chin, Enforcement Counsel, at (617) 918-1728.



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

9/24/10

Date