



Clean Harbors Environmental Services, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, MA 02061-9149
781.792.5000
www.cleanharbors.com

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JAN -5 AM 7:49
REGIONAL HEARING
CLERK

Via Certified Mail
Return Receipt Requested 7007 2760 0003 7724 9516

December 17, 2008

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

RE: IN THE MATTER OF CLEAN HARBORS ENVIRONMNETAL
SERVICES, INC.
DOCKET NO. TSCA-02-2009-9208
ANSWER AND REQUEST FOR HEARING

Dear Hearing Clerk:

Enclosed please find the original and one copy of the answer and request for hearing in the above referenced case. Copies of this have been provided to the Complainant as well.

Please address any future correspondence on this matter to the undersigned at the address above.

Thank you for your assistance with this matter.

Sincerely,

William F. Connors
Sr. Vice President of Compliance

Enclosure:

Cc: Dore LaPosta, Director USEPA Region 2 Division of Enforcement and Compliance Assistance

**U.S Environmental Protection Agency
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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In the Matter of)	
)	
Clean Harbors Environmental Services, Inc.,)	Docket No.
)	TSCA-02-09-9208
Respondent)	
)	
Proceeding under Section 16(a) of)	
the Toxic Substances Control Act.)	

**ANSWER OF RESPONDENT, CLEAN HARBORS ENVIRONMENTAL SERVICES,
INC., AND REQUEST FOR HEARING**

NOW COMES respondent, CLEAN HARBORS ENVIRONMENTAL SERVICES, INC. (hereinafter "Respondent"), through its undersigned representative, and responds to the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") filed by the U.S. Environmental Protection Agency Region 2 ("Complainant"), by hereby requesting an adjudicatory hearing, and through the responses and defenses set forth herein.

I.

Respondent was served with this Complaint on October 10, 2008 by means of certified First Class Mail. Respondent's Answer and Request for Hearing are hereby timely filed on December 17, 2008, in compliance with the 90 day response timeframe set forth in the Complaint.

II.

For convenient reference, the alleged violation set forth in the order is set forth *in verbatim* below, followed by Respondent's answer:

COUNT 1: Manifesting PCBs

Circumstance Level – 1

major manifesting

Extent Category – **Major**

amount over 6,000 kilograms

Proposed Penalty for this Count: \$32,500

Total Proposed Penalty: \$32,500

Response:

Respondent admits the factual allegations as set forth in paragraphs 12 through 15 of Count 1 of the Complaint with the exception of paragraph 13 for the weight of the material as 13,925 kilograms. Respondent denies the total weight. The original bill of lading listed the volume of material in cubic yards. Respondent also denies the appropriate civil penalty has been assessed for the two reasons set forth below.

Defense Argument 1. – The penalty assessed is inconsistent with the POLYCHLORINATED BIPHENYLS (PCB) PENALTY POLICY

On page 3 of the United State Environmental Protection Agency POLYCHLORINATED BIPHENYLS (PCB) PENALTY POLICY (the “Penalty Policy”), dated April 9, 1990 section 1.a., second paragraph, states:

“The only acceptable alternative to compliance with the non-disposal requirements of the PCB rules is lawful disposal. Accordingly, a fair penalty for violating the non-disposal requirements can be based on the proper disposal of PCBs or PCB items. This should provide adequate incentive to comply with the non-disposal requirement.”.

This non-disposal manifesting issue was caused by human error. Respondent had multiple analytical data reports for multiple remediation projects. Respondent's employee erred by associating the wrong analytical report with the shipment and thus classifying the waste as material with less than 50 PPM PCBs when the waste actually had greater than 50 ppm PCBs. Upon discovery of the error on the day following the shipment, the waste was recharacterized as PCB waste with greater than 50 ppm PCBs and disposed of in a TSCA permitted hazardous waste landfill.

The original waste had been mixed with other material in a container at Clean Harbors of Baltimore, Inc. All the original waste plus the material contaminated by contact was disposed of at Clean Harbors Grassy Mountain, LLC. 29,090 Kg of material was disposed of as PCB contaminated material. The cost for the transportation, disposal and assessorial charges was \$12,547.49. Since a Clean Harbors company provided the disposal, there is no invoice. Charges were calculated and assessed by internal documentation. Refer to the e-mail in Attachment 1.

Had 3rd party disposal been used, the waste would have been disposed of at Chemical Waste Management's facility in Model City, NY. The cost of transportation and disposal at this facility would have been \$6,319.50. See Attachment 2 for quotations and calculations of the total cost.

The Respondent hereby requests the penalty to be adjusted to \$6,319.50.

Defense Argument 2. – This penalty should be a “Significant” Extent under the Penalty Policy

The volume of material transported on bill of lading No. 179520 was 15 cubic yards of material. One cubic yard of soil is the equivalent of four 55 gallon drums. Fifteen cubic yards is therefore, sixty 55 gallon drum equivalents. Per page 4 of the Penalty Matrix, 15 to 75 55-gallon drums is a Significant Extent for Non-Disposal Violations. More than 6,000 Kg is a Major Extent. The Penalty Policy is internally inconsistent whereby this waste could be classified as Major or Significant depending on whether the material was measured by weight or 55 gallon drum equivalents. Respondent hereby requests the penalty be adjusted to reflect a lesser Extent.

III.

Please note that the Respondent participated in an informal settlement conference via conference call on November 19, 2008 with Agency representatives. The Agency representatives indicated they were not authorized to respond to a request to assess the penalty at the actual cost of disposal in lieu of the amount calculated by the Penalty Matrix and that a formal hearing would need to be requested to respond to that request. Respondent therefore requests a hearing to advance this position.

Respondent is submitting this request for hearing as a protective pleading to preserve all legal rights with respect to the allegations. However, Respondent is still willing to negotiate a mutually acceptable settlement. Provided such a settlement can be reached, Respondent would withdraw its

request for a hearing.

IV.

A copy of this Answer and Request for Hearing has been provided Mr. Chester Norman and Ms. Ann Finnegan of the Pesticides and Toxic Substance Branch of US EPA in Edison, NJ.

Respectfully submitted:

BY: 

William F. Connors, Esq. (BBO#634626)
Sr. Vice President of Compliance
Clean Harbors Environmental, Inc.
42 Longwater Drive
P.O. Box 9149
Norwell, MA 02061-9149
Telephone: 781-792-5169

CERTIFICATE OF SERVICE

I hereby certify that one original and one copy of the above and foregoing has been mailed via certified First Class U.S. Mail, return receipt requested, to the Region 2 Regional Hearing Clerk of EPA at 290 Broadway, 16th Floor, New York, NY 10007-1866 on this 17th day of December, 2008.

BY: 
William F. Connors, Esq. (BBO#634626)

Transmitted this day via U.S. Mail to:

Ms. Ann Finnegan
UESPA Facilities
Raritan Depot
2890 Woodbridge Avenue
Mail Code: 105MS105
Edison, NJ 08837-3679

And to:

Chester Norman, Chemist
Pesticides and Toxic Substances Branch
U. S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue MS 105
Edison, NJ 08837-3679

Attachment I

Connors, William F

From: Cattafi, Carmine A
Sent: Wednesday, November 19, 2008 9:38 AM
To: Cattafi, Carmine A; Cardone, James A; Connors, William F
Subject: RE: PCB Manifests

Jim / Bill,
Here are the costs for these loads as provided by Dave Kirby.

	BA1620764	BA1620768
Trans	4,700.38	4,684.11
Disposal	1,588.00	1,435.00
Container Charge	60.00	80.00
Total	6,348.38	6,199.11

Carmine

From: Cattafi, Carmine A
Sent: Tuesday, November 18, 2008 2:28 PM
To: Cardone, James A; Connors, William F
Subject: PCB Manifests

Jim / Bill,

Attached are the manifests that were generated from Baltimore to Grassy Mountain. I am trying to find out the intercompany costs for these shipments.

Carmine

12/17/2008

Attachment 2

Disposal Estimate:

Waste Management, Model, City, NY Disposal Quote
 \$75.00 per ton with a 10-ton minimum per load
 plus 6% Town Tax
 3% Environmental Fee
 disposal fuel surcharge at @ 5.57%.

Waste Quantity:
 two roll offs of 14,545 Kg each.

14,545 Kg	x	2.2 lbs/Kg	=	31,999 lbs per load
31,999 lbs	+	2,000 lbs/ton	=	15.9995 tons per load

Disposal Cost:

2 loads	x	15.999 tons	x	\$75.00 per ton	=	\$2,399.85
\$2,399.85	x	6 % Town Tax			=	\$143.99
\$2,399.85	x	3 % Environmental Fee			=	\$72.00
\$2,399.85	x	5.57 % fuel surcharge			=	<u>\$133.67</u>
Disposal Cost Subtotal:						\$2,749.51

Transportation Estimate:

Price Trucking: \$1700.00/load plus 5% fuel surcharge for Baltimore, MD to Model City, NY.

2 loads	x	\$1,700 per load			=	\$3,400
\$3,400	x	5 % fuel surcharge			=	<u>\$170.00</u>
Transportation Cost Subtotal						= \$3,570

Transportation and Disposal Cost to ship to Model City, NY						= \$6,319.51
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Connors, William F

Subject: FW: 3rd party quote needed for NOV response

From: Stanton, William J
Sent: Tuesday, December 16, 2008 2:18 PM
To: Connors, William F; Ship Rolloff_Dump
Subject: RE: 3rd party quote needed for NOV response

Bill,

Price Trucking will charge us \$1700.00 plus 5% fuel for this BA to Model City Rolloff run..

From: Jonathon Price [mailto:JWPrice@pricetrucking.com]
Sent: Tuesday, December 16, 2008 2:14 PM
To: Stanton, William J; Jonathan; Murphy, Timothy J; Nick Pantano
Subject: RE: Baltimore to Model City , need rolloff rate please

1700 plus your fuel

Jonathon Price
Price Trucking Corp.
67 Beacon St.
Buffalo, NY 14220
Office 716-822-1414 ext.101
Fax 716-826-5922

12/17/2008

Connors, William F

From: Tessier, Kevin M
Sent: Wednesday, November 19, 2008 12:07 PM
To: Connors, William F
Subject: FW: Soil/Concrete material

-----Original Message-----

From: Stauffer, Patricia [mailto:PStauffe@wm.com]
Sent: Friday, October 24, 2008 2:43 PM
To: Tessier, Kevin M
Subject: RE: Soil/Concrete material

Kevin,

\$75.00 per ton with a 10-ton minimum per loads plus 6% Town Tax, 3% Environmental and the disposal fuel surcharge at the time of shipment currently @ 5.57%.

The concrete must be sized to 6" minus. I did give Karen Asnes pricing yesterday for 2' x 2' concrete, but that was a special allowance for that particular bid.

Pat (Ludwig) Stauffer
Technical Service Representative
CWM Chemical Services, LLC
Model City, NY Facility
716/754-0451 Phone
716/754-0211 Fax
pstauffe@wm.com

Log onto www.wmdisposal.com for industrial waste services, facility locations, regulatory guidance & required forms for waste approval

Lamp Recycling: www.wmlamptracker.com

-----Original Message-----

From: Tessier, Kevin M [mailto:tessier.kevin@cleanharbors.com]
Sent: Friday, October 24, 2008 1:08 PM
To: Tessier, Kevin M; Stauffer, Patricia; Stauffer, Patricia
Subject: RE: Soil/Concrete material

Sorry material coming from Bridgeport, CT.
Thanks,
KT

-----Original Message-----

From: Tessier, Kevin M
Sent: Friday, October 24, 2008 1:07 PM
To: 'Patricia Stauffer (PStauffe@wm.com)'; 'Pat Stauffer (pstauffe@wm.com)'
Subject: Soil/Concrete material

Pat,

May I please get pricing for up to 2 cans of TSCA PCB soil (75%) and concrete. The concrete will be broken to small (< 2'x2') pieces.

Customer pushing us hard for pricing so as quickly as possible would be great. Sorry for rush, but there must be something about Fridays!

Thanks,

Kevin M. Tessier
Outbound Disposal Coordinator
Clean Harbors Environmental Services
42 Longwater Drive
PO Box 9149
Norwell, MA 02061-9149
Office: 781-792-5736
Fax: 781-792-5930
Email: tessier.kevin@cleanharbors.com
Web: www.cleanharbors.com

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