

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:)
)
Connecticut Transfer Co., LLC)
469 Brooklawn Ave.)
Fairfield, CT 06825)
)
Respondent)
)
Proceeding under Section 16(a))
of the Toxic Substances Control)
Act, 15 U.S.C. § 2615(a).)

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Docket No.
TSCA-01-2009-0052
ANSWER
EPA OFFICE OF
HEARINGS AND ADJUDICATION

) November 2, 2009

I. STATUTORY AND REGULATORY BASIS

1. Admitted, except that Respondent has changed it's name to Connecticut Transfer Recycling Company, LLC.
2. Admitted
3. Admitted
4. Admitted
5. Admitted
6. Admitted
7. Admitted
8. Admitted
9. Admitted
10. Admitted
11. Admitted

11/5
Spoke w/
Bill Chiu &
he spoke w/
respondent.
They prefer an
ext. Ignore
this answer

II. GENERAL ALLEGATIONS

12. Denied; Respondent is a Limited Liability Company.
13. Denied; respondent acquired the facility in August, 2007.
14. Admitted
15. Admitted, on information and belief
16. Respondent lacks sufficient information to admit or deny this allegation, and therefore denies it.
17. Respondent lacks sufficient information to admit or deny this allegation as to the dates of notification, but admits that BUR picked up oil from it's facility, after BUR sampled the oil. That sampling indicated that the oil did not contain PCBs.
18. Admitted
19. Admitted
20. Admitted as to the identification of the transformer. Denied that the transformer was "stored for disposal". The transformer was intended to be used, but was eventually removed and disposed of because of vandalism to the unit. Admitted that the facility floor lacked continuous curbing and that the area around the transformer was stained. Respondent does not know what is meant by "heavily stained with oil", and therefore denies that allegation.
21. Admitted that the marking on the unit had been defaced; the marking was probably defaced by the vandals who caused the release from the generator. Denied that the transformer was "stored for disposal", as the Respondent had planned to continue using it. Admitted that the area near the transformer was not marked with the ML mark; the prior owner, which was the party that installed the transformers, had not place any markings in the area where they were utilized. Denied that the unit had been removed from service for disposal prior to the date the damage to the unit from vandalism was discovered.
22. Admitted that the units were inactive at the time of the inspection. Denied that the units were off line. Respondent had purchased the facility with the units in place, and the markings or lack of markings and condition of the pad(s) were attributable to the prior owner. Respondent originally planned to continue to use the transformers for its

operations, and was in the process of evaluating and cleaning up the facility when the Pyranol (GE #857381) was vandalized in approximately March, 2008, at which time the oil in that transformer was released, which release led to the subsequent inspections by CTDEP, the sampling and subsequent removal of all of the transformers from the facility, and in turn eventually led to this complaint.

23. Denied that the unit was removed from service. Admitted that the unit was not labeled with a date of removal from service, since it was not removed from service until after GE #857381 was vandalized. Admitted that the area around the unit was not labeled with the ML mark. However, the Respondent was not the party responsible for marking of the area, and could not have been responsible until it acquired the facility in August, 2007. Further, the Respondent could not have known about the PCB content of the transformers until they were sampled, since the prior owner of the facility had not labeled either the transformers or the area in which the transformers were located.
24. Admitted; see answer to No. 23 above.
25. Admitted
26. Admitted that CTDEP reported these numbers, but TSI reported Westinghouse #529638 at < 50 ppm; Westinghouse #529369 at < 50 ppm, Westinghouse #529370 at < 50 ppm, and GE #7022501 at 207 ppm.
27. Admitted
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted, but Respondent was not aware of that fact until the unit was sampled in August, 2008 and the results reported back.
32. Denied. The transformers were not "PCB waste" until a determination was made to remove them from service, which did not occur until after the vandalism of the Pyranol transformer and the subsequent evaluations of all of the transformers, at which time they were emptied and/or removed from the premises.
33. Denied; there was no PCB waste generated until after the vandalism of the Pyranol generator in approximately March, 2008. Respondent did not produce PCBs, nor was it Respondent's act that first caused PCB items to become subject to the disposal requirements of subpart D of the regulations. Respondent did have physical control of the

transformers beginning in late August, 2007, but no decision to terminate their use was made until after the Pyranol transformer was vandalized, as noted in the report prepared by Janet Kwiatkowski of the Connecticut Department of Environmental Protection (CTDEP) of her April 9, 2008 inspection of the facility. The transformers were emptied and removed by qualified contractors, per Ms. Kwiatkowski's instructions and as required in the NOV issued by CTDEP.

34. This paragraph is a conclusory allegation and does not need to be admitted or denied.

III. VIOLATIONS

35. Respondent incorporates by reference it's responses to Paragraphs 1-34

36. Admitted

37. Admitted

38. Admitted

39. Respondent admits that there was staining around GE#857381, but does not know what is meant by "heavily stained" and therefore denies the allegation.

40. Admitted

41. Respondent admits that 40CFR 761(a) states, in relevant part::

a) General PCB disposal requirements. Any person storing or disposing of PCB waste must do so in accordance with subpart D of this part. The following prohibitions and conditions apply to all PCB waste storage and disposal:

(1) No person may open burn PCBs. Combustion of PCBs approved under §761.60 (a) or (e), or otherwise allowed under part 761, is not open burning.

(2) No person may process liquid PCBs into non-liquid forms to circumvent the high temperature incineration requirements of §761.60(a).

(3) No person may discharge water containing PCBs to a treatment works (as defined §503.9(aa) of this chapter) or to navigable waters unless the PCB concentration is <3 µg/L (approximately 3 ppb), or unless the discharge is in accordance with a PCB discharge limit included in a permit issued under section 307(b) or 402 of the Clean Water Act.

(4) Spills and other uncontrolled discharges of PCBs at concentrations of >50 ppm constitute the disposal of PCBs.

Respondent denies that this provision is relevant to the GE #G857381.

42. Denied.

43. This paragraph is a conclusory allegation and does not need to be admitted or denied.

COUNT 2 - Improper Disposal of PCBs from General Electric #7022501

44. Respondent incorporates by reference its responses to Paragraphs 1-43

45. Admitted

46. Denied. 40 C.F.R. 761.50(a) states:

a) General PCB disposal requirements. Any person storing or disposing of PCB waste must do so in accordance with subpart D of this part. The following prohibitions and conditions apply to all PCB waste storage and disposal:

(1) No person may open burn PCBs. Combustion of PCBs approved under §761.60 (a) or (e), or otherwise allowed under part 761, is not open burning.

(2) No person may process liquid PCBs into non-liquid forms to circumvent the high temperature incineration requirements of §761.60(a).

(3) No person may discharge water containing PCBs to a treatment works (as defined §503.9(aa) of this chapter) or to navigable waters unless the PCB concentration is <3 µg/L (approximately 3 ppb), or unless the discharge is in accordance with a PCB discharge limit included in a permit issued under section 307(b) or 402 of the Clean Water Act.

(4) Spills and other uncontrolled discharges of PCBs at concentrations of >50 ppm constitute the disposal of PCBs.

47. Admitted.

48. Admitted the soil was stained.

49. Admitted

50. Admitted

51. Denied, in that the material was not “waste” at the time of the release.

52. Denied.

53. This paragraph is a conclusory allegation and does not need to be admitted or denied.

COUNT 3 - Failure to Comply with Marking Requirements for General Electric #G857381 and/or General Electric #7022501

54. Respondent incorporates by reference its responses to Paragraphs 1-53

55. Admitted

56. Admitted

57. Denied

58. Denied; the unit had been marked, the unit had been vandalized and the marking was damaged without the knowledge of respondent.

59. This paragraph is a conclusory allegation and does not need to be admitted or denied.

60. Admitted

61. Denied

62. Admitted that the area was not marked with the ML Mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a); denied that the equipment was stored for disposal.

63. This paragraph is a conclusory allegation and does not need to be admitted or denied.

64. Denied

65. Admitted that the area was not marked with the ML Mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a); denied that the equipment was stored for disposal.

66. This paragraph is a conclusory allegation and does not need to be admitted or denied.

COUNT 4 - Failure to Comply with Storage and Notification Requirements for General Electric #G857381 and/or General Electric #7022501

67. Respondent incorporates by reference its responses to Paragraphs 1-66

68. Admitted

69. Admitted
70. Denied that the unite was stored for disposal.
71. Denied that the unit was stored for disposal.
72. Denied in that 40 C.F.R. 761.65(c)(1)(I) provides an exception for non-leaking PCB Articles and Equipment, and the respondent is aware of no evidence that General Electric #7022501 was leaking. Further denied in that neither unit was stored for disposal until ~~not earlier than the date of the vandalism of GE #G857381, and GE #7022501 was removed from the facility once the it was found to contain PCBs, which was after that date.~~
73. This paragraph is a conclusory allegation and does not need to be admitted or denied.
74. This paragraph is a conclusory allegation and does not need to be admitted or denied.
75. Admitted
76. Admitted the unit was not marked; denied that the unit was removed from service.
77. Admitted the unit was not marked; denied that the unit was removed from service.
78. This paragraph is a conclusory allegation and does not need to be admitted or denied.
79. Admitted.
80. Admitted.
81. Admitted.
82. Denied, in that the regulations contain other requirements for notification, depending upon the status of the party. This assertion appears to be intended to support EPAs contention that there was a violation for Respondent not having an EPA ID number, and is tied to EPA's contention that Respondent stored for disposal PCB equipment (Paragraph 84 and 85) and owned and/or operated a PCB storage facility (Paragraph 86), which requires an EPA ID number. Respondent denies that the equipment was stored for disposal. The only "storage" took place between the time GE # 857381 was vandalized and the date it was removed from the facility. The other transformers were simultaneously removed from the facility, but prior thereto were not "stored", in that they were in place, ready to be used.

EPA ignores the fact that the units in question were not put into service in the first instance by Respondent, and that Respondent had purchased the facility in 'as is' condition, effectively inheriting the equipment and related markings, or lack thereof, and was engaged in the process of cleaning up the equipment when the facility and the equipment were vandalized. EPA further ignores the fact that even a casual reading of the regulations indicates that they were intended to apply to operating facilities which generated or received PCB materials, and not to facilities which have effectively been abandoned and acquired by independent parties who intend to operate or renovate them.

83. Admitted.
84. Denied; see 82 above.
85. Denied; see 82 above.
86. Denied; 40 C.F.R. 761.65(b) is not intended to apply in this situation. It is intended to apply to "facilities used for the storage of PCBs and PCB Items designated for disposal", and to classify a non-operating facility which is in the process of being rehabilitated after years of neglect by a prior owner, is a hyper-technical interpretation of the regulations, and effectively a trap for any party which acquires an old facility. The facility as issue was not a PCB storage facility, it was an old factory, which had a number of transformers in it. It did not "store" PCB equipment. The new owner, the Respondent, had not determined to get rid of the transformers, but rather intended to use them if they were suitable. The transformers were disposed of when one of them was vandalized, which caused a release of oil and ruined the unit, and .
87. Denied; Respondent contends that the exception provided in 40 C.F.R. 761.205(c)(1) may well apply, since the facility did not store PCB materials for disposal under 40 C.F.R. 761.65(b) or (c)(7).
88. Admitted that Respondent did not notify EPA of its PCB handling activities prior to engaging in the same, but CTDEP was aware of said activities, and required that Respondent get rid of the transformers at issue (see Report of J. Kwiatkowski concerning April 9, 2008 inspection and related Notice of Violation (NOVWSPCB08-001) issued to Respondent by CTDEP). Respondent was under direction from CTDEP to dispose of the materials, and did so. Since CTDEP is intimately involved with USEPA in such matters, USEPA may be considered to have constructive notice of the Respondent's activities. Further, Respondent had delegated all the remedial and clean up efforts to outside consultants, since Respondent has no staff and no employees. Respondent relied on those consultants to take care of the problems, which would include securing any necessary permits, giving notices, and retaining qualified and licensed contractors to deal with the transformers and any remediation waste.

89. Admitted that Respondent did not have an EPA ID number; denied that it needed any such number, since it did not store PCB materials for disposal under 40 C.F.R. 761.65(b) or (c)(7).
90. This paragraph is a conclusory allegation and does not need to be admitted or denied.
91. This paragraph is a conclusory allegation and does not need to be admitted or denied.

IV. PROPOSED CIVIL PENALTY

92. The cited statutory and regulatory provisions speak for themselves, and do not need to be admitted or denied.
93. The cited statutory and regulatory provisions speak for themselves, and do not need to be admitted or denied. Denied that the PCB Penalty Policy “provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors...to particular cases.” EPA has proposed a penalty of \$97,000 in this matter. EPA is aware that Respondent is a new company, with no prior operating history, that is acquired the facility which is the subject of this complaint in August, 2007, and that prior to that the facility was owned and operated for decades by another entity, not related to Respondent.

EPA has been presented with documentation demonstrating that Respondent has no funds, no cash flow, no assets other than the facility at N. Washington Ave, Bridgeport, CT, which is the subject of this action and which is fully liened to secure the purchase of the same, and is in debt in excess of \$1,000,000. No payments of any kind have been made by Respondent to any Member, employee, officer, or parent or subsidiary company (of which there are none). The alleged violations, even if true, are largely attributable to the prior owners of the facility, who are not to the best of Respondent’s knowledge not being charged with anything.

In brief, Respondent bought an old dilapidated facility in late August, 2007, in one of the most economically depressed cities in the state of Connecticut. It began to remove old equipment from the facility; it did not, admittedly, focus its initial efforts on the possibility that there might be PCB-containing transformers on the site. Respondent had been notified that the GE #857381 transformer, located inside the building on a concrete floor, contained PCBs, via a pre-purchase inspection report, but that unit was properly marked at the time with the “large mark”, and was in good condition. At the time of purchase Respondent had no reason to know that the four outside generators might also contain PCBs.

The area in which GE #857381 was installed was admittedly not marked at the time Respondent purchased the facility. Respondent did not know about the PCB content of the other generators until after they were sampled, following the vandalization of GE

#857381 in approximately March, 2008. Since it was not aware there was a PCB issue, no action was taken to address such an issue. When the inside transformer was vandzitized, and it was determined that the outside transformers might contain PCBs, in April, 2008 , Respondent, which has no environmental manager, nor any employees at all, retained qualified outside parties to address the requirements of CTDEP to clean up the oil release from GE #857381 and to remove the transformers from the facility. It is unlikely that Respondent could have removed the equipment more expeditiously.

Respondent admits that it did not apply for EPA ID numbers, and that the areas where the equipment was located did not meet the requirements for storing PCB equipment meant for disposal. However, Respondent did not intend to dispose of the equipment, it intended to use it, at least up to the time it was sampled in April, 2008 and CTDEP required that it be removed. Accordingly, no EPA ID number was required u[to that time. Following the vandalization of GE #857381 it and the other transformers on site were quickly removed from the facility. Any expenditure of effort at that point to meet TSCA storage requirements would have been futile - in order to meet the requirements the outside equipment had to be moved, and when it was moved it was removed, so by the time the requirements could have been met, the equipment was gone. For GE #857381 the issue was the lack of a berm around the unit, and since there had already been a release, due to the vandalism, there was no point in putting in a berm, particularly since the unit was quickly removed from the site.

Similarly, the marking requirements could probably physically have been met, had it been necessary, but prior to the sampling in April, 2008 Respondent did not know that the outside transformers contained any PCBs, so there was no need to mark the area where they operated. As noted above, GE #857381 was marked with the Large Mark, although it appears that mark was subsequently defaced, probably during the vandalization to the unit. Thereafter Respondent had the units removed, so there was no point in marking them, nor in marking the areas in which they operated.

In consideration of the foregoing, and the fact that Respondent has acted expeditiously address the release, and will incur substantial additional expenses to complete the remediation of the site, Respondent submits that the proposed penalty is excessive, and requests a substantial reduction in the same. Respondent has previously sent a summary of these arguments to EPA's counsel; a copy of that document is attached and incorporated herein as if set forth in full.

95. This allegation is a statement of the Complainant's intent, and does not need to be either admitted or denied.
96. This allegation contains Complainant's rational for it's penalty demand, not a statement of facts, and as such does not need to be either admitted or denied.

97. This allegation contains Complainant's rational for it's penalty demand, not a statement of facts, and as such does not need to be either admitted or denied.
98. This allegation contains Complainant's rational for it's penalty demand, not a statement of facts, and as such does not need to be either admitted or denied.
99. This allegation contains Complainant's rational for it's penalty demand, not a statement of facts, and as such does not need to be either admitted or denied. It should be noted that the contention that "...failure to date a PCB Item with the date it was removed from service adds to the probability that PCBs are not disposed of promptly.." is inapposite in this case, since the items were in the process of being removed immediately after it was determined that removal/disposal was appropriate. The contention that "...the failure to notify EPA of the storage of PCBs and to obtain an EPA identification number has a high probability of impairing EPA's ability to account for and to regulate PCBs." is like wise inapposite, since in this case CTDEP was closely involved with the release and cleanup and the removal of the PCB items, and kept EPA advised of the same.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

- 100 - 104. These paragraphs relate to Respondent's opportunity to request and hearing, and do not need to be either admitted or denied.

VI. SETTLEMENT CONFERENCE

- 105 - 106. These paragraphs relate to Respondent's opportunity to request a settlement conference, and do not need to be either admitted or denied.

Connecticut Transfer and Recycling Company, LLC

By it's attorney:



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William C Spencer, Esq. LLC
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Sandy Hook CT 06482
(203) 426-8331

In the Matter of Connecticut Transfer Company, LLC
TSCA 01-2009-9952

In the proposed penalty calculation (PCBPPC) EPA grouped penalties for Counts 2, 3, and 4, as provided in the policy; no other adjustments were proposed. Respondent believes that EPA should also take into consideration a number of matters, some covered by the policy and some not specifically addressed in the policy.

1. A significant issue is that the Respondent has been charged with the improper storage and release of "PCB waste". Respondent rejects that characterization. The PCB items in the facility were there without Respondent's actual knowledge that they contained PCBs, and Respondent intended to use the equipment in its operations. The transformers were not stored as waste; they were not waste, since they were going to be used, and they were not "stored", since they were installed and had been used, and were going to continue to be used where and as installed. The release from the Pyranol generator, and recommendations of CTDEP, obviated that use, but that does not change the fact that the units were going to continue to be used.

2. Of lesser importance, but in Respondent's view not inconsequential, is that it has no history of or experience in dealing with PCB items, and will have none in the future. It's business does not involve using those materials. The transformers were simply in the building Respondent bought, they were not intentionally acquired, installed or used by Respondent. When it became apparent that there was a problem, Respondent, which has no staff of its own, hired what it thought were qualified companies to address the problem.

3. The PCBPPC calls for the consideration of other mitigating factors by EPA. Respondent believes that there are significant such factors, which should result in a significant reduction in the proposed penalty. In general, these factors are:

Mitigating factors (from the PCBPPC):

1. Culpability

(a) Violator's knowledge. At the time of the release Respondent had recently acquired the facility, and was in the process of cleaning it up for another use. Respondent did not procure or install the PCB items, which had been present for many years prior to Respondent buying the property. Respondent is not yet an operating entity, and has no employees and no environmental manager, and the owners' have no knowledge of the issues surrounding PCBs. This is not an instance of a large company being lax in its efforts, but a very small company that was completely ignorant of its obligations.

(b) Degree of control. Count 1 concerns the release from the Pyranol generator. The release was caused by the illegal activities of third parties who broke into the locked

facility and vandalized the unit, causing the release. The release is entirely unrelated to any action of the Respondent, and while the Respondent will necessarily bear the costs of cleanup, to punish it with a penalty for matters beyond its reasonable control seems to be inappropriate, rather like issuing a ticket to a driver because his car was pushed through a stop sign after being hit from behind. Even the PCBPPC calls for a reduction in penalty if Respondent "...lacked ...knowledge of the potential hazard created by ...another's conduct, and also lacked control over the situation to prevent occurrence of the violation." in this case, criminal activity by a third party.

2. History of violations. There is no history of violations.

3. Ability to pay. Respondent has submitted documentation as to its financial status. The company has no net assets. The only "asset" it does have is the building itself, which was purchased with borrowed funds and is worth less than was paid for it. The company has no income, is deeply in debt, and has paid out no salaries, wages, or other payments to any employee, officer or member.

4. Ability to continue in business. Questionable, as Respondent has no net assets and no income.

5. Other factors as justice may require (such as environmental expenditures)

Attitude: Respondent has cooperated with CTDEP and EPA to address the problem. It promptly retained consultants to drain and remove the PCB items, cleaned the facility, and is moving ahead with completing characterization of the release area and removal of the remaining contaminated materials. The costs to date related to the release are on the order of \$75,000, with substantial additional expenses to be incurred to complete the site delineation and remediation.

Respondent has followed all of the recommendations of CTDEP, and without waiting for explicit direction from EPA or CTDEP during September and October took additional samples, did borings, and installed a monitoring well.

Voluntary Disclosure: Not relevant, the release was reported to EPA at the same time it was reported to Respondent.

Cost of the Violation to the government: None

Economic Benefit of Noncompliance: None

While we believe that all of the factors described above apply to each count of the proposed penalty calculation, we suggest that the following factors particularly apply to specific counts:

- Count 1: Release from Pyranol Transformer. No culpability. The release was caused by the illegal activities of unrelated parties.
- Count 2: Release from GE#7022501. There is no evidence that the leaks from this unit occurred while Respondent owned it, and prior to purchasing the facility the unit was not under Respondent's control. Due to the long period during which the unit was under the control of the prior owners, it is likely that the release occurred then. The penalty against Respondent should be reduced to reflect that fact.
- Count 1: Marking violations. Respondent had just recently acquired the facility, and was not aware of the PCB content of the transformers, and the outside transformers were not marked. The prior owner failed for many years to mark either the units or the locations where they were installed. When Respondent In addition, the Pryanol Transformer was marked, but the marking was defaced by persons unknown, probably the vandals in the course of stealing the metal out of the unit. When the unit was emptied by Bridgeport United it was sampled, and was reported to NOT contain PCBs. That report was later found to be incorrect, but Respondent was entitled to rely upon the report from it's contractor. While Respondent had not marked the area where the Pyranol transformer was used prior to it being vandalized, the unit was not a "stored PCB waste".
- Count 4: Failure to notify EPA of "PCB waste activities", have an EPA ID number; store PCB waste in a proper storage facility, and date PCB items when placed into storage. Respondent has no employees, and certainly no one knowledgeable about PCB disposal. It relied upon supposedly qualified third parties to handle the matter. Those third parties were trusted to secure any and all documentation necessary to properly deal with the PCB items, and apparently failed to do so. While technically Respondent was "in charge", in fact J Services LLC, of Bridgeport, CT, and Transformer Service, Inc., of concord, NH, were entrusted with the task, and were paid for that work.

Further, by the time it was determined that the units were "waste" there was no point in setting up a proper storage facility or in dating them. The purpose of the details of the construction of the storage facility is to minimize the possibility of a release - in this case, the release had already occurred, and by the time a "proper facility" could have been constructed the units would have been gone. In fact, the outside units would have had to be moved to either a new space, or to fix up the old one. Instead, they were emptied and shipped off site, which is presumably preferable to storing them. The inside unit was already on concrete, in a locked building. By the time a berm could have been built, the unit had been drained..

Similarly, the purpose of putting a date on the items when they are "stored" is to minimize long-term storage. In this case the units were drained and shipped out

immediately after being determined to be useless; there was no point in marking them with the date they went out of service, since there was no chance they would not be moved off the site immediately.