



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
JAN - 2 PM 2:52
REGIONAL HEARINGS
CLERK

DEC 31 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peter Bruin
Orchard Park Collision Inc.
4154 South Taylor Road
Orchard Park, NY 14127

Re: In the Matter of Orchard Park Collision, Inc.
Docket No. TSCA-02-2008-9205

Dear Mr. Bruin:

Enclosed is the Complaint and Notice of Opportunity For Hearing in the above referenced proceeding. This Complaint alleges a violation of the Toxic Substances Control Act (TSCA) and regulations promulgated pursuant to TSCA, set forth at 40 C.F.R. Part 761, pertaining to polychlorinated biphenyls (PCBs).

It is the intention of the United States Environmental Protection Agency (USEPA) to seek resolution of this Complaint in an equitable and mutually agreeable manner. As outlined in the Complaint, the Agency encourages the use of an informal conference to provide an opportunity for settlement discussions. You have been given ninety (90) days rather than the customary thirty (30) days to file an Answer to this Complaint. If you wish to attempt informal settlement, please do not file your Answer before a representative of the Division of Enforcement and Compliance Assistance (DECA) has contacted you to discuss the scheduling of an informal conference. Filing an Answer before discussions are held or at any point within these ninety (90) days will result in referral of your case to the Office of Regional Counsel.

I have enclosed copies of the Consolidated Rules of Practice (40 C.F.R. Part 22) and recent revisions published at 64 Fed. Reg. 40138 (July 23, 1999), as well as a copy of the appropriate Penalty Policy referenced in the Complaint. Also enclosed is a copy of the EPA Supplemental Environmental Projects Policy (SEP Policy) for your consideration. The Agency encourages the use of SEPs, where appropriate, as part of the settlement.

A DECA representative will contact you shortly to discuss the possibility of scheduling an informal conference. If you have any questions regarding the Complaint or the settlement process, you or your staff should feel free to contact Ms. Ann Finnegan at (732) 906-6177.

Sincerely,

A handwritten signature in black ink, appearing to read "Dore LaPosta", with a long horizontal flourish extending to the right.

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

U.S. Environmental Protection Agency
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2008 JAN -2 PM 2:52
REGIONAL HEARING
CLERK

----- X
In the Matter of :
Orchard Park Collision Inc., :
Respondent. :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
----- X

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No.
TSCA-02-2008-9205

COMPLAINT

Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. This is a civil administrative action instituted pursuant to Section 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.
2. The Complainant is the Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, who has been duly delegated the authority to institute this action.
3. This Complaint serves notice of Complainant's preliminary determination that Respondent has violated the federal regulations concerning polychlorinated biphenyls ("PCBs") promulgated pursuant to the authority granted by Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761, and that Respondent has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.
4. Respondent is Orchard Park Collision, Inc.
5. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.
6. Respondent owns, operates, and/or controls the facility in and around 4154 South Taylor Road, Orchard Park, New York (hereinafter "Respondent's facility").
7. Respondent has owned, used and maintained, or stored for reuse or disposal "PCBs" and "PCB Items", as those terms are defined at 40 C.F.R. § 761.3, at Respondent's facility.

8. Respondent is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.

9. By letter dated October 2, 2007, Safety-Kleen Systems Inc. notified EPA that they had received used oil from Respondent's facility that was contaminated with PCBs over 50 parts per million.

COUNT 1

Distribution in Commerce

10. With certain exceptions not applicable here, Section 6(e)(3) of TSCA, 15 U.S.C. § 2605(e)(3), and the regulations promulgated pursuant to it and set forth at 40 C.F.R. § 761.20(c) prohibit the processing or distribution in commerce of any PCBs or any PCB Items, regardless of the concentration, without an exemption issued under 40 C.F.R. § 761.80.

11. On or about August 24, 2007, Respondent sold approximately 350 gallons of used oil to Safety Kleen Systems, Inc. This material was taken from a tank on Respondent's site and from one 55-gallon drum.

12. Upon receipt of the material described in paragraph 11, above, Safety Kleen Systems, Inc. analyzed the oil and determined that the material in the 55-gallon drum was contaminated with PCBs at approximately 66 parts per million ("ppm").

13. The materials described in paragraphs 11 and 12, above, constitute "PCBs" as that term is defined at 40 C.F.R. § 761.3.

14. Respondent's sale of oil contaminated with PCBs constitutes "distribution in commerce" as that term is defined at 40 C.F.R. § 761.3.

15. At no time during which the activities referenced in paragraphs 11 and 12, above, occurred did Respondent have an exemption under 40 C.F.R. § 761.80 to process or distribute PCBs in commerce.

16. Section 15(1)(B) and (C), 15 U.S.C. §§ 2614(1)(B) and (C), provide that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or the regulations promulgated thereunder.

17. Respondent's sale of PCB, as referenced in paragraphs 11 through 15, above, constitutes a failure to comply with the prohibition on PCB processing and distribution in commerce at Section 6(e)(3) of TSCA, 15 U.S.C. § 2605(e)(3), and 40 C.F.R. § 761.20(c), which is a violation of Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B)(C).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, which authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA and the regulations promulgated pursuant thereto. Pursuant to the Civil Monetary Penalty Inflation Adjustment Final Rule dated February 13, 2004, effective March 15, 2004 (69 Fed. Reg. 7121), a penalty of up to \$32,500 may be assessed per day for each violation of TSCA occurring after that effective date.

For purposes of determining the amount of any penalty to be assessed, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violations. Section 16 of TSCA also requires EPA to take into account the following with respect to the violator: ability to pay, effect of the penalty 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.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at this time, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), and EPA's April 9, 1990 "PCB Penalty Policy". A copy of each is enclosed. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

The Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

COUNT 1: Distribution in Commerce

Circumstance Level - 2

major use category

Extent Category - **minor**

amount less than 220 gallons

Proposed Assessment for this Count: **\$ 3,869**

Total Proposed Gravity Based Penalty: **\$ 3,869**

In accordance with Agency policies regarding modifications to the relevant penalty policies, the total gravity-based penalty amount is rounded to the nearest unit of 100 dollars.

Total Proposed Penalty (rounded off per EPA policy): \$ 3,900

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits", and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. 40 C.F.R. § 22.15(a). While that provision requires that an Answer must be filed within 30 days after service of a Complaint, EPA, Region 2, has administratively extended the deadline for such filing in this proceeding, and Respondent's Answer accordingly must be filed within 90 days of service of the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA final order. See 16 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business".

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the period set forth in 40 C.F.R. § 22.15(a); extended to 90 days for this Complaint] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final

order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within 30 days after the initial decision is served". 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.07(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document". Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA staff member listed below:

Ann Finnegan, Life Scientist
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Edison, New Jersey 08837-3679
(732) 906-6177

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A

request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Alternatively, payment may be made by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045

- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"
- 6) Name of Respondent
- 7) Docket Number

A copy of the check or other instrument of payment shall be filed with the Regional Hearing Clerk, Region 2 (at the New York address noted above) and a copy provided to the EPA staff member identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated:

December 31, 2007

Dore LaPosta
Dore LaPosta, Director

Division of Enforcement and
Compliance Assistance

U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

TO: Peter Bruin
Orchard Park Collision Inc.
4154 South Taylor Road
Orchard Park, NY 14127

Enclosures

