



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 10 2011

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7666 4592

Mr. and Mrs. George and Gloria Goodman
127 Guinea Drive
Xenia, Illinois 62899

TSCA-05-2011-0005

Re: Violations of the Toxic Substances Control Act by Goodman Salvage Company

Dear Mr. and Mrs. Goodman:

The U.S. Environmental Protection Agency has filed the enclosed complaint against you under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The complaint alleges three violations of the Polychlorinated Biphenyls (PCBs) Disposal Rule found at 40 C.F.R. Part 761 and proposes a total penalty of \$45,387.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may wish to request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Maria Gonzalez (C-14J), at the address provided above. Ms. Gonzalez's phone number is (312) 886-6630; her email address is gonzalez.maria@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Karl".

Richard C. Karl
Acting Director
Land and Chemicals Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAR 16 2011

In the Matter of:)
George E. Goodman,)
d/b/a Goodman Salvage)
Xenia, Illinois)
Respondent.)
_____)

Docket No.: TSCA-05-2011-0005
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxics
Substances Control Act, 15 U.S.C. § 615(a)

REGIONAL HEARING CLERK
USEPA
REGION 5

COMPLAINT

1. This is a civil administrative action instituted pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and sections 22.01(a)(5) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(5), 22.13.

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, Region 5, United States Environmental Protection Agency (EPA).

3. The Respondent is George E. Goodman, an individual doing business as Goodman Salvage.

STATUTORY AND REGULATORY AUTHORITY

4. Section 15 of TSCA, 15 U.S.C. § 2614, states that "[i]t shall be unlawful for any person to -- (1) fail or refuse to comply with... (B) any requirement prescribed by section 2604 or 2605 of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title."

5. The Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978

(43 Fed. Reg. 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations ("PCB rule") were lawfully promulgated pursuant to Section 6 of TSCA on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

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

7. The PCB rule applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. 40 C.F.R. §761.1(b)(1).

8. The PCB Rule, at 40 C.F.R. § 761.3, defines "disposal" as: "intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items."

9. The PCB Rule, at 40 C.F.R. § 761.3, defines PCBs 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"

10. The PCB Rule, at 40 C.F.R. § 761.3, defines "PCB Items" as "... anything that deliberately or unintentionally contains or has as any part of it any PCB or PCBs."

11. The PCB Rule, at 40 C.F.R. § 761.3, defines "storage for disposal" as "storage of PCBs that have been designated for disposal."

12. The PCB Rule, at 40 C.F.R. § 761.3, defines "PCB waste(s)" as "those PCBs and PCB Items that are subject to the disposal requirements of 40 C.F.R. part 761, subpart D."

13. The PCB Rule, at 40 C.F.R. § 761.1(b)(5), states: “No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.”

GENERAL ALLEGATIONS

14. Respondent is a "person" as defined at 40 C.F.R. § 761.3.

15. Respondent at all times relevant to this Complaint operated a scrap yard at 127 Guinea Drive, Xenia, Illinois 62899 (the Facility).

16. On March 29, 2006, an inspector from U.S. EPA inspected the Facility to determine Respondent's compliance with the PCB Rule.

17. On March 29, 2006, Respondent had on site at the Facility one General Electric capacitor which was labeled “Pyranol” on its metal nameplate, which was located outside of a building, on the ground, exposed to atmospheric elements.

18. On March 29, 2006, Respondent had on site at the Facility one (55) gallon drum containing 56 ppm PCB oil, which was located outside of a building, on the ground, exposed to atmospheric elements.

19. By letter dated February 11, 2011, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of the PCB Rule and that section 16 of TSCA authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

20. Respondent responded by correspondence dated February 14, 2011, that, among other things, claimed an inability to pay the penalty, and attached tax returns.

21. By letter dated March 2, 2011, EPA requested addition information to support the claim of an inability to pay.

SPECIFIC ALLEGATIONS

COUNT I

22. Paragraphs 1 through 21, above, are incorporated herein by reference.

23. The PCB Rule, at 40 C.F.R. § 761.60(a), provides that, with exceptions not relevant to this Complaint, PCB liquids at concentrations of 50 ppm or greater must be disposed of in incinerators complying with 40 C.F.R. § 761.70, or, if at concentrations between 50 and 500 ppm, in another manner as allowed by 40 C.F.R. § 761.60.

24. The PCB Rule, at 40 C.F.R. § 761.50(b)(1), provides that “any person removing PCB liquids from use ... must dispose of them in accordance with 40 C.F.R. § 761.60(a), or decontaminate them in accordance with 40 C.F.R. § 761.79.”

25. A soil sample collected on March 29, 2006, from the ground in the area where the 55 gallon drum, identified herein at Paragraph 18, was stored revealed PCBs at a concentration of 4.6 ppm in the sample.

26. The Source of the PCB material detected in the soil sample, identified herein at Paragraph 24, was the 55 gallon drum, identified herein at Paragraph 18.

27. The release of the PCB material detected in the soil sample from the 55 gallon drum, as described herein at Paragraph 18, constitutes a disposal of PCBs under the PCB Rule, See above, Paragraph 8.

28. Respondent's failure to dispose of PCB liquids found in soil samples in an incinerator, or in another manner as allowed by the PCB Rule, constitutes a violation of 40 C.F.R. § 761.60(a), and, consequently, is an unlawful act under Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

COUNT II

29. Paragraphs 1 through 28, above, are incorporated herein by reference.

30. The storage for disposal requirements at 40 C.F.R. § 761.65 apply to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.

31. The PCB Rule, at 40 C.F.R. § 761.65(b), in part, requires that PCBs and PCB Items be stored in a facility with a roof and walls, and with a concrete floor and curbing, unless otherwise exempted.

32. The PCB Rule, at 40 C.F.R. § 761.65(c)(1), provides that, notwithstanding 40 C.F.R. § 761.65(b), PCB Items may be temporarily stored for up to 30 days provided the criteria in 40 C.F.R. § 761.65(c) are met.

33. As of May 3, 2006, the PCB capacitor and 55 gallon drum of PCB oil continued to be stored at the Facility, as described herein at Paragraphs 17 and 18.

34. Respondent's storage of a PCB capacitor and 55 gallon drum of PCB oil for a period of time exceeding 30 days outside of a building, on the ground, exposed to atmospheric elements, as described in Paragraphs 17 and 18, was an unlawful storage of PCB Items and constitute violations of 40 C.F.R. § 761.65(b), and, consequently, unlawful acts under Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(B).

COUNT III

35. Paragraphs 1 through 34, above, are incorporated herein by reference.

36. The PCB rule, at 40 C.F.R. § 761.65(c)(8), provides that “PCB items shall be dated on the item when they are removed from service for disposal. The storage shall be managed so that the PCB Items can be located by this date.”

37. As of March 29, 2006, the 55 gallon drum, identified herein at Paragraph 18, was not dated.

38. Respondent’s storage of a 55 gallon drum of PCB oil that was not dated with the date it was removed from service constituted a violation of 40 C.F.R. § 761.65(c)(8), and, consequently, an unlawful act under Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(b).

COUNT IV

39. Paragraphs 1 through 38, above, are incorporated herein by reference.

40. The PCB Rule, at 40 C.F.R. § 761.40(a)(1), in part, requires that each of the following items in existence on or after July 1, 1978 be marked with the “M_L” label, which label is identified at 40 C.F.R. § 761.45(a)(1): “(1) PCB containers...(3) PCB Large High Voltage Capacitors at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked;...(5) PCB Large Low Voltage Capacitors at the time of removal from use if not already marked (See also paragraph (k) of this Section).”

41. The PCB capacitor identified at Paragraph 17 contained 1.36 kg or more dielectric of fluid and is thus a Large Capacitor under the definitions at 40 C.F.R § 761.3.

42. Respondent did not comply with 40 C.F.R. § 761.40(k).

43. The PCB capacitor identified at Paragraph 17 had been removed from use.

44. As of March 29, 2006, neither the PCB capacitor nor 55 gallon drum of PCB oil, identified herein at Paragraphs 17 and 18, respectively, were marked with the "M_L" label.

45. Respondent's failure to mark the large PCB capacitor and the 55 gallon drum of PCB oil, identified herein at Paragraphs 17 and 18, respectively, with the "M_L" label constitute violations of 40 C.F.R. § 761.40(a), and consequently, are unlawful acts under Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

COUNT V

46. Paragraphs 1 through 45 are incorporated herein by reference.

47. The PCB Rule, at 40 C.F.R. § 761.40(a)(10) requires that each storage area used to store PCB and PCB Items must be marked with the "M_L" label.

48. The PCB Rule, at 40 C.F.R. § 761.65(c)(3), also provides that "any storage area subject of the requirements of paragraph (b) or paragraph (c)(1) of this section shall be marked as required in subpart C § 761.40(a)(10)."

49. As of March 29, 2006, the area used by Respondent to store the PCB capacitor and 55 gallon drum of PCB oil, identified herein at Paragraphs 17 and 18, respectively, were not marked with the "M_L" label.

50. Respondent's failure to mark with the "M_L" label the area within which it stored its PCB capacitor and 55 gallon drum of PCB oil, identified herein at Paragraphs 17 and 18, respectively, constitutes a violation of 40 C.F.R. § 761.40(a)(10) and 761.65(c)(3), and consequently, an unlawful act under Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

PROPOSED CIVIL PENALTY

51. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to assess a civil penalty under section 16 of TSCA of up to \$25,000 for each unlawful act

committed under section 15 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation that occurred after January 12, 2009.

52. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), provides that, in determining the amount of any civil penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

53. In determining the penalty amount proposed in this Complaint, the Administrator's Delegated Complainant analyzed the known evidence in this case, in consideration of the penalty criteria identified at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), as interpreted in the Administrator's "Polychlorinated Biphenyls (PCBs) Penalty Policy," dated April 9, 1990" (the Penalty Policy). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases.

54. Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes that the

Administrator assess the following civil penalties against Respondent for the violations alleged in this complaint:

<u>COUNT I</u>	40 C.F.R. § 761.60(a)	\$ 32,500
<u>COUNT II</u>	40 C.F.R. § 761.65(b)	\$ 3,869
<u>COUNT III</u>	40 C.F.R. § 761.65(c)(8)	\$ 1,290
<u>COUNT IV</u>	40 C.F.R. § 760.40(a)	\$ 3,869
<u>COUNT V</u>	40 C.F.R. § §760.40(a)(10) and 760.65(c)(3)	\$ 3,869
TOTAL CIVIL PENALTY		\$ 45,387

Consistent with the Administrator's published decisions, see *In Re New Waterbury, Ltd.*, 5 E.A.D. 529, at 541 (1994), Complainant presumes that Respondent has an ability to pay the amounts of penalty proposed. As discussed above, Respondent has raised a claim of inability to pay, and EPA has requested additional information. Should Respondent make available to Complainant relevant and credible financial records which demonstrate that it does not have an ability to pay the amounts of penalty proposed, Complainant will set aside the presumption and reduce the amounts of penalty proposed consistent with what is revealed in Respondent's financial records. Likewise, should Respondent provide Complainant credible information relevant to any other issue regarding the appropriate amount of penalty, on review of that information, Complainant will amend the amounts of penalty proposed if, and as, warranted.

RULES GOVERNING THIS PROCEEDING

55. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (Consolidated Rules) at 40 C.F.R. part 22 govern this

civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

FILING AND SERVICE OF DOCUMENTS

56. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

57. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to section 22.5 of the Consolidated Rules. Complainant has authorized Maria Gonzalez to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Gonzalez at (312) 886-6630. Her address is:

Maria Gonzalez (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

PENALTY PAYMENT

58. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashiers check payable to Treasurer, United States of America and by delivering the check to:

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

59. Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Gonzalez, at the address stated above in paragraph 57 and to:

Section Secretary (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

OPPORTUNITY TO REQUEST A HEARING

60. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as described below.

ANSWER

61. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 56, above, and must serve copies of the written answer on the other parties. If Respondent chooses to file a written answer to the complaint, in accordance with section 22.14(c) of the Consolidated Rules, he must do so within 30 calendar days after receiving the complaint. In counting the 30 day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

62. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

63. If Respondent does not file a written answer within 30 calendar days after receiving this complaint, the Presiding Officer may issue a default order, after motion, under section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes a final order of the Administrator of EPA under section 22.27(c) of the Consolidated Rules.

SETTLEMENT CONFERENCE

64. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Maria Gonzalez at the address provided above in paragraph 57.

65. Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

CONTINUING OBLIGATION TO COMPLY

66. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with TSCA or any other applicable federal, state, or local law.

CONSENT AGREEMENT AND FINAL ORDER

67. EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Consent Order.

Dated: 3-10-11

By: Richard C. Karl
Richard C. Karl, Acting Director
Land and Chemicals Division


CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint involving Mr. and Mrs. George Goodman, was filed on March 16, 2011, with the Regional Hearing Clerk (E-19J), U. S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7666 4592, along with a copy each of the “Consolidated Rules of Practice, 40 C.F.R. Part 22,” and “Section 1018 Disclosure Rule Enforcement Response Policy” to:

Mr. and Mrs. George Goodman
127 Guinea Drive
Xenia, Illinois 62899

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
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