

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

**In the Matter of:**

Triton Services, Inc.

RESPONDENT

Triton Services, Inc.  
3100 Charlotte Avenue  
Easton, Pennsylvania 18045

FACILITY

**Docket No. RCRA/TSCA-03-2011-0211**

**ADMINISTRATIVE COMPLAINT  
AND NOTICE OF OPPORTUNITY  
TO REQUEST A HEARING**

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**I. PRELIMINARY STATEMENT**

This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928(a)(1) and (g), as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), Section 16 (2)(A) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(2)(A), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance and Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator of EPA has delegated this authority under RCRA and TSCA to the Regional Administrators of EPA, and this authority has been further delegated to the Director of the Land and Chemicals Division, EPA Region III (“Complainant”). The Respondent in this matter is Triton Services, Inc. (“Respondent”). This action concerns Respondent’s facility located in Easton, Pennsylvania.

EPA hereby notifies Respondent that EPA has determined that Respondent has violated certain provisions of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the Commonwealth of Pennsylvania’s federally authorized hazardous waste management program, 25 Pa. Code Chapter 260a *et seq.*, TSCA and the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761 (the “PCB regulations”).

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of RCRA

Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes EPA to take enforcement action whenever it is determined that a person is in violation of any requirement of TSCA and/or EPA's regulations thereunder. The authority to seek civil penalties for TSCA violations is found at Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A).

Effective January 30, 1986, November 27, 2000, March 22, 2004, and June 29, 2009, EPA authorized the Commonwealth of Pennsylvania to administer its hazardous waste management program ("PaHWR") *in lieu* of the federal program, including certain provisions implementing the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. Law No. 98-616), which amended Subtitle C of RCRA. The authorized provisions of the PaHWR codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268c – 270a, thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). See *51 Fed. Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009).

The current PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWR authorization. The 2009 authorized PaHWR do not make any changes to the November 27, 2000 PaHWR that are relevant to the violations set forth in.

### Notice of Action to the Commonwealth of Pennsylvania

EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## **II. ADMINISTRATIVE COMPLAINT**

### **Findings of Facts and Conclusions of Law**

1. The EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to RCRA Section 3008, 42 U.S.C. § 6928, and the Consolidated Rules of Practice (40 C.F.R. §§ 22.1(a)(4) and (5) and 22.4(c)).
2. Respondent is, and was at the time of the violations alleged herein, a corporation of the State of Maryland, and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903 (15), 25 Pa. Code § 260a.10, 40 C.F.R. § 761.3 and as used in Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615.

3. Respondent is, and has been at all times relevant to this Complaint, the “owner” and “operator” of a “facility”, described below, as those terms are defined in 25 Pa. Code § 260a.1, which, with the exception, among others, of the term “facility”, incorporates by reference 40 C.F.R. § 260.10, or 25 Pa. Code § 260a.10.
4. The facility referred to in Paragraph 3, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a manufacturing facility located at 3100 Charlotte Avenue, Easton, Pennsylvania, 18045.
5. Respondent is, and was at all times relevant to this Complaint, a "generator" of “hazardous waste,” as described below, at the Facility, as those terms are defined at 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10 with exceptions not relevant herein.
6. On August 20, 2008, an inspector from EPA conducted a Compliance Evaluation Inspection (“August 20, 2008 TSCA CEI”) at the Facility pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610. The purpose of the August 20, 2008 CEI was to evaluate Respondent’s compliance with regulations promulgated pursuant to TSCA Section 6(e), 40 C.F.R. Part 761, governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls (“PCBs”) and PCB Items at the Facility.
7. On May 25, 2010, EPA conducted a RCRA Subtitle C Compliance Evaluation Inspection of the Facility (“May 25, 2010 RCRA CEI”).
8. On May 25, 2010, EPA conducted a TSCA Section 6(e) inspection at the Facility (“May 25, 2010 TSCA CEI”).
9. On January 18, 2011, EPA sent Respondent an information request letter pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent replied to this information request by letter dated February 7, 2011.
10. Respondent vacated the Facility on or about June 2010.
11. Respondent manufactured electronic devices and signaling equipment at the Facility until Respondent vacated the Facility on or about June 2010.
12. Respondent’s Facility is assigned EPA RCRA identification number PAD002395325.
13. Spent cyanide plating bath solutions from electroplating operations are “solid wastes” and “hazardous wastes” (F007) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because spent cyanide plating bath solutions have the characteristics for reactivity and corrosivity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22 and 23.

14. Spent acetone is a solid waste and a hazardous waste (F003) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristic for ignitability within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.21.

15. Waste mercury is a solid waste and hazardous waste (D009) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristic for toxicity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.24.

16. Waste lead is a solid waste and hazardous waste (D008) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristic for toxicity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.24.

17. Waste nitric acid is a solid waste and hazardous waste (D002) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristic for corrosivity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22.

18. Waste acetic acid is a solid waste and hazardous waste (D001 and D002) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristics for ignitability and corrosivity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.21 and 22.

19. Waste sulfuric acid is a solid waste and hazardous waste (D002) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.31, because it has the characteristic for corrosivity within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22.

20. Respondent is a “small quantity handler of universal waste,” as that term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9, with exceptions not relevant herein.

21. As used herein, the terms “PCB”, “PCB Article”, “PCB Item”, “PCB Transformer”, “Large Low Voltage Capacitor”, “Large High Voltage Capacitor” and “PCB Container” shall each have the definition and meaning for such terms set forth in 40 C.F.R. § 761.3. All the PCB contaminated equipment referred to herein are “PCB Items” within the meaning of 40 C.F.R. § 761.3 having a PCB concentration of 50 ppm or greater.

22. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Sections 5 or 6.

## COUNT I

(Owning and/or operating a hazardous waste storage facility without a permit or interim status)

23. The preceding paragraphs are incorporated by reference.
24. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e) provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
25. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in containers, tanks, drip pads or containment buildings may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that, among other things, while being stored on-site, each container holding hazardous waste must be kept closed during storage, except when it is necessary to add or remove waste, as provided in 40 C.F.R. Part 265, Subpart I (including 40 C.F.R. § 265.173(a)).
26. At the time of the May 25, 2010 RCRA CEI, Respondent failed to keep containers used for storage of hazardous waste closed at all times except when adding or removing waste as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), which in turn references 40 C.F.R. Part 265, Subpart I (including 40 C.F.R. § 265.173(a)(3)).
27. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(4), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste may accumulate hazardous waste in containers on-site for 180 days or less without a permit or having interim status provided that the generator complies with 40 C.F.R. § 262.34(a)(3), which requires that while being stored on-site, each container holding hazardous waste be labeled or marked with the words "Hazardous Waste."
28. At the time of the May 25, 2010 RCRA CEI, Respondent failed to label or mark each container used for storage of hazardous waste with the words "Hazardous Waste" as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34 (d)(4) which requires compliance with 40 C.F.R. § 262.34(a)(3).
29. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste may accumulate hazardous waste in containers on-site without a permit or having interim status provided that the hazardous waste is stored on-site for no longer than 180 days.

30. From at least July 11, 2009 to September 29, 2010, Respondent stored hazardous waste mercury (D009) on-site at the Facility for greater than 180 days.
31. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(c), provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status.
32. At the time of the May 25, 2010 RCRA CEI, Respondent maintained four drums in a second floor plating room as a satellite accumulation area into which hazardous waste generated in other areas of the Facility was transferred. The four drums being used by Respondent as a satellite accumulation area were not located at or near any point of generation where hazardous waste was initially accumulated, and were not under the control of the operator of the process generating the waste.
33. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(1), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste may accumulate hazardous waste for 180 days or less without a permit or having interim status provided that, among other things, the quantity of waste accumulated on-site never exceeds 6000 kilograms.
34. At the time of the May 25, 2010 RCRA CEI until at least September 13, 2010, Respondent stored more than 6000 kilograms of the hazardous waste described in paragraphs 13 – 19, above, on-site.
35. Respondent failed to qualify for the “less than 180-day” generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), by failing to satisfy the conditions for such exemption as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), as described in Paragraphs 26, 28, 30, and 34, above.
36. By failing to meet the criteria for the exemption, the Facility became a hazardous waste treatment, storage or disposal “facility,” as that term is defined by 25 Pa. Code § 260a.10 with respect to the activities described above.
37. Respondent does not have, and never had, a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility.
38. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for its hazardous waste storage activities described in this count.
39. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by owning and operating a

hazardous waste storage facility without a permit or interim status.

40. From at least July 11, 2008 to September 29, 2010, Respondent owned and operated a hazardous waste storage facility without a permit or interim status, in violation of 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270 with exceptions not relevant herein, and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

**COUNT II**  
(Container Management)

41. The preceding paragraphs are incorporated by reference.

42. Pursuant to 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173 (a), Respondent is required to keep containers of hazardous waste closed during storage except when it is necessary to add or remove waste.

43. At the time of the May 25, 2010 RCRA CEI, inspectors observed that Respondent failed to keep a container which contained hazardous waste closed during storage except when adding or removing waste, as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a).

44. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep containers of hazardous waste described above closed during storage except when adding or removing waste at the time of the May 25, 2010 RCRA CEI, for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

**COUNT III**  
(Universal Waste Storage)

45. The preceding paragraphs are incorporated by reference.

46. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste is required to keep containers of universal waste lamps closed.

47. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), a small quantity handler of universal waste is required to contain universal waste lamps in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps.

48. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), a small quantity handler of universal waste is required to label universal waste lamp containers

with the words “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamp(s).”

49. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

50. At the time of the May 25, 2010 RCRA CEI until July 28, 2010, Respondent failed to keep containers of universal waste lamps closed, in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1).

51. At the time of the May 25, 2010 RCRA CEI until July 28, 2010, Respondent failed to label universal waste lamp containers with the words “Universal Waste-Lamp(s)” or “Waste Lamp(s)” or “Used Lamp(s)” in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e).

52. At the time of the May 25, 2010 RCRA CEI until July 28, 2010, Respondent failed to contain universal waste lamps in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps, in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1).

53. At the time of the May 25, 2010 RCRA CEI until July 28, 2010, Respondent failed to demonstrate, by any of the methods set forth in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), the length of time that the universal waste lamps at its Facility had been accumulated from the date such lamps became wastes or were received, in violation of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c).



54. Respondent's acts or omissions as set forth in Paragraphs 50, 51, 52, and 53 are violations of 25 Pa Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), 14(e) and .15(c), for which a penalty may be assessed pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

#### **COUNT IV**

(Failure to Mark PCB Articles and Equipment at Time of Removal from Use – Rectifier A Area)

55. The preceding paragraphs are incorporated by reference.

56. 40 C.F.R. § 761.40(a)(3) and (5) provide that PCB Large High and Low Voltage Capacitors that were in existence on or after July 1, 1978 shall be marked in accordance with 40 C.F.R. § 761.45(a) at the time of removal from use if not already marked.

57. At the time of the May 25, 2010 TSCA CEI, Respondent had permanently shut down its operations at the Facility.

58. At the time of the May 25, 2010 TSCA CEI, EPA inspectors observed five PCB Large High or Low Voltage Capacitors with PCB nameplates located in an area of the Facility identified by Respondent as the "Rectifier A Area."

59. The five PCB Large High or Low Voltage Capacitors with PCB nameplates located in Rectifier A Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3 and had been removed from use.

60. The five PCB Large High or Low Voltage Capacitors in the Rectifier A Area at the Facility were not marked as required by 40 C.F.R. § 761.40(a)(3) or (5).

61. Respondent's failure to mark the five PCB Large High or Low Voltage Capacitors in the Rectifier A Area at the Facility as required by 40 C.F.R. § 761.40(a)(3) or (5) constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.40(a)(3) or (5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT V**

(Failure to Mark PCB Articles and Equipment at Time of Removal from Use – Rectifier E Area)

62. The preceding paragraphs are incorporated by reference.

63. 40 C.F.R. § 761.40(a)(3) and (5) provide that PCB Large High and Low Voltage Capacitors that were in existence on or after July 1, 1978 shall be marked in accordance with 40 C.F.R. § 761.45(a) at the time of removal from use if not already marked.

64. At the time of the May 25, 2010 inspection, EPA inspectors observed four PCB Large High or Low Voltage Capacitors located in an area of the Facility identified by Respondent as the "Rectifier E Area."

65. The four PCB Large High or Low Voltage Capacitors located in Rectifier E Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3 and had been removed from use.

66. Three of the four PCB Large High or Low Voltage Capacitors in the Rectifier E Area at the Facility were not marked as required by 40 C.F.R. § 761.40(a)(3) or (5).

67. Respondent's failure to mark the three PCB Large High or Low Voltage Capacitors in the Rectifier E Area at the Facility as required by 40 C.F.R. § 761.40(a)(3) or (5) constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.40(a)(3) or (5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C § 2615.

#### **COUNT VI**

(Failure to Mark PCB Articles and Equipment at Time of Removal from Use – Basing Area)

68. The preceding paragraphs are incorporated by reference.

69. At the time of the May 25, 2010 inspection, EPA inspectors observed four General Electric Pyranol PCB Large High or Low Voltage Capacitors located in an area of the Facility identified by Respondent as the "Basing Area."

70. The four General Electric Pyranol PCB Large High or Low Voltage Capacitors located in the Basing Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3 and had been removed from use.

71. The four General Electric Pyranol PCB Large High or Low Voltage Capacitors located in the Basing Area at the Facility were not marked as required by 40 C.F.R. § 761.40(a)(3) or (5).

72. Respondent's failure to mark the four General Electric Pyranol PCB Large High or Low Voltage Capacitors in the Basing Area at the Facility as required by 40 C.F.R. § 761.40(a)(3) or (5) constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.40(a)(3) or (5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **COUNT VII**

(Failure to Mark PCB Articles and Equipment at Time of Removal from Use – Second Floor Area)

73. The preceding paragraphs are incorporated by reference.

74. At the time of the May 25, 2010 TSCA CEI, at least one PCB Large High Voltage Capacitor and seventeen PCB Large High or Low Voltage Capacitors were being stored for disposal, located in the large open area at the south end of the second floor of the Facility (“Second Floor Area”).

75. The seventeen PCB Large High or Low Voltage Capacitors were “PCB Items”, “PCB articles” and “PCB-contaminated electrical equipment” within the meaning of 40 C.F.R. § 761.3 and had been removed from use.

76. The PCB Large High or Low Voltage Capacitors located in the Second Floor Area of the Facility were not marked as required by 40 C.F.R. § 761.40(a)(3) or (5).

77. Respondent’s failure to mark the seventeen PCB Large High or Low Voltage Capacitors located in the Second Floor Area of the Facility as required by 40 C.F.R. § 761.40(a)(3) or (5) constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.40(a)(3) or (5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **COUNT VIII**

(Failure to Mark Area used to Store PCBs and PCB Items – Basing Area)

78. The preceding paragraphs are incorporated by reference.

79. 40 C.F.R. § 761.65 applies to the storage for disposal of PCBs and PCB Items at concentrations of 50 ppm or greater. Owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal must comply with specific storage unit requirements specified in 40 C.F.R. § 761.65(b) with exceptions not relevant to this matter. 40 C.F.R. § 761.65(c)(1) provides that certain PCB Items may be stored temporarily in an area that does not comply with the requirements of 40 C.F.R. § 761.65(b) for up to thirty days from the date of their removal from service.

80. 40 C.F.R. § 761.65(c)(3) requires that any storage area subject to the requirements of 40 C.F.R. § 761.65(b) or 40 C.F.R. § 761.65(c)(1) shall be marked as required in subpart C of 40 C.F.R. § 761.40(a)(10).

81. At the time of the May 25, 2010 TSCA CEI, a PCB-contaminated Transformer and at least one PCB Large High or Low Voltage Capacitor were being stored for disposal by Respondent in the Basing Area at the Facility and such area was subject to the requirements of either 40 C.F.R.

§ 761.65(b) or 40 C.F.R. § 761.65(c)(1).

82. The PCB-contaminated Transformer and the PCB Large High or Low Voltage Capacitor located in the Basing Area were “PCB Items”, “PCB articles” and PCB-contaminated electrical equipment within the meaning of 40 C.F.R. § 761.3.

83. At the time of the May 25, 2010 TSCA CEI, the Basing Area at the Facility was not marked as required by 40 C.F.R. § 761.65(c)(3) and § 761.40(a)(10).

84. Respondent’s failure to mark the Basing Area at the Facility as required by 40 C.F.R. § 761.65(c)(3) and § 761.40(a)(10) is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b), and (c)(3), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **COUNT IX**

(Failure to Mark Area used to Store PCBs and PCB Items – Second Floor Area)

85. The preceding paragraphs are incorporated by reference.

86. At the time of the May 25, 2010 TSCA CEI, at least one PCB Large High Voltage Capacitor and seventeen PCB Large High or Low Voltage Capacitors were being stored for disposal in the Second Floor Area at the Facility and as such was subject to either 40 C.F.R. § 761.65(b) or 40 C.F.R. § 761.65(c)(1).

87. At the time of the May 25, 2010 TSCA CEI, the Second Floor Area at the Facility was not marked as required by 40 C.F.R. § 761.40(a)(10) and 761.65(c)(3).

88. The PCB Large High Voltage Capacitor and seventeen PCB Large High or Low Voltage Capacitors located in Second Floor Area at the Facility were “PCB Items”, “PCB articles” and “PCB- contaminated electrical equipment” within the meaning of 40 C.F.R. § 761.3 and had been removed from use.

89. Respondent’s failure to mark the Second Floor Area at the Facility as required by 40 C.F.R. § 761.40(a)(10) and 761.65(c)(3) is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b), and (c)(3), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **COUNT X**

(Failure to Mark Area used to Store PCBs and PCB Items – Storage Area)

90. The preceding paragraphs are incorporated by reference.

91. At the time of the May 25, 2010 TSCA CEI, over 250 PCB Large High or Low Voltage Capacitors were being stored for disposal in a storage area (“Storage Area”) at the Facility.

92. The over 250 PCB Large High or Low Voltage Capacitors stored for disposal in the Storage Area at the Facility were “PCB Items”, “PCB articles” and “PCB-contaminated electrical equipment” within the meaning of 40 C.F.R. § 761.3.

93. At the time of the May 25, 2010 TSCA CEI, the Storage Area at the Facility was not marked as required by 40 C.F.R. § 761.40(a)(10) and 761.65(c)(3).

94. Respondent’s failure to mark the Storage Area at the Facility as required by 40 C.F.R. § 761.40(a)(10) and 761.65(c)(3) is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b) and (c)(3), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **COUNT XI**

(Failure to Maintain Records of Monthly Inspections of PCB Items in Storage for Disposal – Switchgear Area)

95. The preceding paragraphs are incorporated by reference.

96. 40 C.F.R. § 761.65(c)(5) provides in pertinent part that all PCB Items in storage for disposal shall be checked for leaks at least once every 30 days.

97. 40 C.F.R. § 761.65(c)(5) further provides that records of such inspections, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. § 761.180(a) and (b).

98. At the time of the May 25, 2010 TSCA CEI, Respondent had stored for disposal fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid in an area identified by Respondent as the “Switchgear Area” at the Facility from at least October 2008 to the date of the May 25, 2010 TSCA CEI.

99. The fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid in storage for disposal in the Switchgear Area at the Facility were “PCB Items”, “PCB articles” and “PCB-contaminated electrical equipment” within the meaning of 40 C.F.R. § 761.3.

100. At the time of the May 25, 2010 TSCA CEI, Respondent did not have records documenting the inspections required by 40 C.F.R. § 761.65(c)(5) for the fifteen PCB Large High or Low Voltage Capacitors and three PCB Transformers containing 384 gallons of liquid stored for disposal in the Switchgear Area at the Facility.

101. Respondent’s failure to maintain records of monthly inspections of the fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid stored for disposal in the Switchgear Area at the Facility constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(5), for

which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XII**

(Failure to Maintain Records of Monthly Inspections of PCB Items in Storage for Disposal – Basing Area)

102. The preceding paragraphs are incorporated by reference.

103. At the time of the May 25, 2010 TSCA CEI, Respondent had stored for disposal one PCB-contaminated Transformer and fewer than 50 PCB Large High or Low Voltage Capacitors (but greater than in the Basing Area at the Facility) from at least October 2008.

104. At the time of the May 25, 2010 TSCA CEI, Respondent did not have inspection records documenting the inspections required by 40 C.F.R. § 761.65(c)(5) for the PCB-contaminated Transformer and fewer than 50 PCB Large High or Low Voltage Capacitors stored for disposal in the Basing Area at the Facility.

105. The PCB-contaminated Transformer and fewer than 50 PCB Large High or Low Voltage Capacitors stored for disposal in the Basing Area at the Facility were “PCB Items”, within the meaning of 40 C.F.R. § 761.3.

106. Respondent’s failure to maintain records of monthly inspections of the PCB contaminated Transformer and fewer than 50 PCB Large High or Low Voltage Capacitors stored for disposal in the Basing Area at the Facility constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XIII**

(Failure to Maintain Records of Monthly Inspections of PCB Items in Storage for Disposal – Second Floor Area)

107. The preceding paragraphs are incorporated by reference.

108. At the time of the May 25, 2010 TSCA CEI, Respondent had stored for disposal seventeen PCB Large High or Low Voltage Capacitors in the Second Floor Area at the Facility from at least October 2008.

109. The seventeen PCB Large High or Low Voltage Capacitors stored for disposal in the Second Floor Area at the Facility were “PCB Items”, within the meaning of 40 C.F.R. § 761.3.

110. At the time of the May 25, 2010 TSCA CEI, Respondent did not have inspection records documenting the inspections required by 40 C.F.R. § 761.65(c)(5) for the seventeen PCB Large High or Low Voltage Capacitors stored for disposal in the Second Floor Area at the Facility.

111. Respondent's failure to maintain records of monthly inspections of the seventeen PCB Large High or Low Voltage Capacitors stored for disposal in the Second Floor Area of the Facility constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT XIV**

(Failure to Maintain Records of Monthly Inspections of PCB Items in Storage for Disposal – Mechanical Area)

112. The preceding paragraphs are incorporated by reference.

113. At the time of the May 25, 2010 TSCA CEI, Respondent had stored for disposal three 55 - gallon drums and one 35 - gallon drum, all marked with the PCB M<sub>L</sub> mark from at least October 2008 in an area identified by Respondent as the "Mechanical Area" at the Facility.

114. The three 55 - gallon drums and one 35 - gallon drum in the Mechanical Area at the Facility were "PCB containers" and "PCB Items" within the meaning of 40 C.F.R. § 761.3.

115. At the time of the May 25, 2010 TSCA CEI, Respondent did not have inspection records documenting the inspections required by 40 C.F.R. § 761.65(c)(5) for the three 55 - gallon drums and one 35 - gallon drum, all marked with the PCB M<sub>L</sub> mark and stored for disposal in the Mechanical Area at the Facility.

116. Respondent's failure to maintain inspection records for the monthly inspections of the three 55 - gallon drums and one 35 - gallon drum, all marked with the PCB M<sub>L</sub> and stored for disposal in the Mechanical Area at the Facility constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT XV**

(Failure to Maintain Records of Monthly Inspections of PCB Items in Storage for Disposal – Storage Area)

117. The preceding paragraphs are incorporated by reference.

118. At the time of the May 25, 2010 TSCA CEI, Respondent had stored for disposal over 250 PCB Large High or Low Voltage Capacitors from at least October 2008 in the Storage Area at the Facility.

119. The 250 PCB Large High or Low Voltage Capacitors stored for disposal in the Storage Area at the Facility were "PCB containers" and "PCB Items" within the meaning of 40 C.F.R. § 761.3.

120. At the time of the May 25, 2010 TSCA CEI, Respondent did not have inspection records documenting the inspections required by 40 C.F.R. § 761.65(c)(5) for the over 250 PCB Large High or Low Voltage Capacitors stored for disposal in the Storage Area at the Facility.

121. Respondent's failure to maintain records of the monthly inspections of the over 250 PCB Large High or Low Voltage Capacitors stored for disposal in the Storage Area at the Facility constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(5), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT XVI**

(Failure to Date PCB Items Removed from Service for Disposal – Switchgear Area)

122. The preceding paragraphs are incorporated by reference.

123. 40 C.F.R. § 761.65(c)(8) requires in pertinent part that PCB Items shall be dated on the item when such PCB Items are removed from service for disposal.

124. Respondent removed from service for disposal fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid located in the Switchgear Area at the Facility on or about June 24, 2008.

125. The fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid in storage in the Switchgear Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3.

126. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed the PCB Items described in Paragraph 120, above, and noted that such PCB Items had not been dated as required by 40 C.F.R. § 761.65(c)(8).

127. Respondent's failure to date fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid stored in the Switchgear Area at the Facility when such PCB Items were removed from service for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(8), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT XVII**

(Failure to Date PCB Items Removed from Service for Disposal – Basing Area)

128. The preceding paragraphs are incorporated by reference.



129. Respondent removed from service for disposal a PCB-contaminated Transformer and fewer than fifty PCB Large High or Low Voltage Capacitors located in the Basing Area at the Facility on or about June 24, 2008.

130. The PCB-contaminated Transformer and fewer than fifty PCB Large High or Low Voltage Capacitors located in the Basing Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3.

131. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed the PCB Items described in Paragraph 129, above, and noted that such PCB Items had not been dated as required by 40 C.F.R. § 761.65(c)(8).

132. Respondent's failure to date a PCB-contaminated Transformer and fewer than fifty PCB Large High or Low Voltage Capacitors located in the Basing Area at the Facility when such PCB Items were removed from service for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(8), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C § 2615.

#### **COUNT XVIII**

(Failure to Date PCB Items Removed from Service for Disposal – Second Floor Area)

133. The preceding paragraphs are incorporated by reference.

134. Respondent removed from service for disposal seventeen PCB Large High or Low Voltage Capacitors located in the Second Floor Area at the Facility on or about June 24, 2008.

135. The seventeen PCB Large High or Low Voltage Capacitors located in the Second Floor Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3.

136. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed the PCB Items described in Paragraph 134, above, and noted that such PCB Items had not been dated as required by 40 C.F.R. § 761.65(c)(8).

137. Respondent's failure to date seventeen PCB Large High or Low Voltage Capacitors located in the Second Floor Area at the Facility when such PCB Items were removed from service for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(8), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **COUNT XIX**

(Failure to Date PCB Items Removed from Service for Disposal – Storage Area)

138. The preceding paragraphs are incorporated by reference.

139. Respondent removed from service for disposal over 250 PCB Large High or Low Voltage Capacitors located in the Storage Area at the Facility on or about June 24, 2008.

140. The 250 PCB Large High or Low Voltage Capacitors located in the Storage Area at the Facility were "PCB Items", "PCB articles" and "PCB-contaminated electrical equipment" within the meaning of 40 C.F.R. § 761.3.

141. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed the PCB Items described in Paragraph 139, above, and noted that such PCB Items had not been dated as required by 40 C.F.R. § 761.65(c)(8).

142. Respondent's failure to date over 250 PCB Large High or Low Voltage Capacitors located in the Storage Area at the Facility when such PCB Items were removed from service for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(c)(8), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### COUNT XX

(Failure to Store PCB Items in Areas with Adequate Curbing – Basing Area)

143. The preceding paragraphs are incorporated by reference.

144. 40 C.F.R. § 761.65(b)(1)(ii) requires, with exceptions not applicable here, that after July 1, 1978, owners and operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall, *inter alia*, have an adequate floor that has continuous curbing with a minimum six inch high curb, and that such floor and curbing provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored there, whichever is greater.

145. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed PCB Items, namely one PCB-contaminated Transformer with unknown volume and fewer than fifty PCB Large Capacitors, stored for disposal in the Basing Area at the Facility.

146. The Basing Area at the Facility did not have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii).

147. Respondent's failure to have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii) in the Basing Area at the Facility where PCB Items were stored for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b)(1)(ii), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXI**

(Failure to Store PCB Items in Areas with Adequate Curbing – Storage Area)

148. The preceding paragraphs are incorporated by reference.
149. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed PCB Items, namely over 250 PCB Large High or Low Voltage Capacitors, stored for disposal in the Storage Area at the Facility.
150. The Storage Area at the Facility did not have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii).
151. Respondent's failure to have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii) in the Storage Area at the Facility where PCB Items were stored for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b)(1)(ii), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXII**

(Failure to Store PCB Items in Areas with Adequate Curbing – Second Floor Area)

152. The preceding paragraphs are incorporated by reference.
153. At the time of both the August 20, 2008 and May 25, 2010 TSCA CEIs, EPA inspectors observed PCB Items, namely seventeen PCB Large High or Low Voltage Capacitors stored for disposal in the Second Floor Area at the Facility.
154. The Second Floor at the Facility did not have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii).
155. Respondent's failure to have continuous curbing with a minimum six inch high curb as required by 40 C.F.R. § 761.65(b)(1)(ii) in the Second Floor Area at the Facility where PCB Items were stored for disposal is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b)(1)(ii), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXIII**

(Failure to Maintain PCB Annual Documents - 2005)

156. The preceding paragraphs are incorporated by reference.

157. 40 C.F.R § 761.180(a) requires each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or fifty or more PCB Large High or Low Voltage Capacitors shall develop and maintain at the facility, or a central facility provided they are maintained at that facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared for each facility by July 1 covering the previous calendar year (January through December). The annual document log shall be maintained for at least three years after the facility ceases using or storing PCBs and PCB Items in the quantities described above.

158. Since at least August, 1995 until on or about June 24, 2008, Respondent was an owner of a facility (*i.e.*, the Facility) using or storing fifty or more PCB Large High or Low Voltage Capacitors and was not a commercial storer or a disposer of PCB waste.

159. At the time of the August 20, 2008 TSCA CEI, Respondent had not developed and maintained at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2005.

160. Respondent's failure to develop and maintain at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2005, is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2614.

#### COUNT XXIV

(Failure to Maintain PCB and PCB Item Annual Documents - 2006)

161. The preceding paragraphs are incorporated by reference.

162. At the time of the August 20, 2008 TSCA CEI, Respondent had not developed and maintained at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2006.

163. Respondent's failure to develop and maintain at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2006 is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### COUNT XXV

(Failure to Maintain PCB Annual Documents - 2007)

164. The preceding paragraphs are incorporated by reference.

165. At the time of the August 20, 2008 TSCA CEI, Respondent had not developed and maintained at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2007.

166. Respondent's failure to develop and maintain at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2007 is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2614.

**COUNT XXVI**

(Failure to Maintain PCB Annual Documents - 2008)

167. The preceding paragraphs are incorporated by reference.

168. At the time of the May 25, 2010 TSCA CEI, Respondent had not developed and maintained at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2008.

169. Respondent's failure to develop and maintain at the Facility all annual records and the written annual document log of the disposition of PCBs and PCB Items for the year 2008 is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXVII**

(Storage of PCB Waste in Excess of One Year – Switchgear Area)

170. The preceding paragraphs are incorporated by reference.

171. 40 C.F.R. § 761.65(a)(1) provides that any PCB waste shall be disposed of within one year from the date it was determined to be PCB waste and the decision was made to dispose of it. This date is the date of removal from service for disposal and the point at which the one year time frame for disposal begins.

172. Respondent determined the fifteen PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid stored in the Switchgear Area at the Facility to be PCB waste and decided to dispose of it on or about June 24, 2008.

173. At the time of the May 25, 2010 TSCA CEI, which was one year and eleven months after such PCB Items had been determined to be PCB waste and the decision had been made to dispose of it, EPA inspectors observed the PCB Items listed in Paragraph 172, above, at the Facility in storage for disposal.

174. Respondent's failure to dispose of the PCB Items listed in Paragraph 172, above, within one year of determining such PCB Items to be PCB waste and making the decision to dispose of such PCB Items is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(a)(1), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXVIII**

(Storage of PCB Waste in Excess of One Year – Basing Area)

175. The preceding paragraphs are incorporated by reference.

176. Respondent determined the PCB-contaminated transformer and fewer than fifty PCB Large High or Low Voltage Capacitors stored in the Basing Area at the Facility to be PCB waste and made the decision made to dispose of such PCB Items on or about June 24, 2008.

177. At the time of the May 25, 2010 TSCA CEI, which was one year and eleven months after such PCB Items had been determined to be PCB waste and the decision had been made to dispose of such PCB Items, EPA inspectors observed the PCB Items listed in Paragraph 176, above, at the Facility in storage for disposal.

178. Respondent's failure to dispose of the PCB Items listed in Paragraph 176, above, within one year of such PCB Items having been determined to be PCB waste and the decision having been made to dispose of such PCB Items is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(a)(1), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXIX**

(Storage of PCB Waste in Excess of One Year – Second Floor Area)

179. The preceding paragraphs are incorporated by reference.

180. Respondent determined the seventeen PCB Large Capacitors stored in the Second Floor at the Facility to be PCB waste and made the decision to dispose of such PCB Items on or about June 24, 2008.

181. At the time of the May 25, 2010 TSCA CEI, which was one year and eleven months after such PCB Items had been determined to be PCB waste and the decision had been made to dispose of such PCB Items, EPA inspectors observed the PCB Items listed in Paragraph 180, above at the Facility in storage for disposal.

182. Respondent's failure to dispose of the PCB Items listed in Paragraph 180, above, within one year of determining such PCB Items were PCB waste and deciding to dispose of such PCB Items is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R.

§ 761.65(a)(1), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXX**

(Storage of PCB Waste in Excess of One Year – Area adjacent to Mechanical Area)

183. The preceding paragraphs are incorporated by reference.

184. Respondent determined three 55 - gallon drums and one 35 - gallon drum marked with the PCB M<sub>L</sub> mark and stored in the area adjacent to the Mechanical Area at the Facility were PCB waste and decided to dispose of such PCB Items on or about June 24, 2008.

185. At the time of the May 25, 2010 TSCA CEI, which was one year and eleven months after such PCB Items had been determined to be PCB waste and the decision had been made to dispose of such PCB Items, EPA inspectors observed the PCB Items listed in Paragraph 184, above, at the Facility in storage for disposal.

186. Respondent's failure to dispose of the PCB Items listed in Paragraph 184, above, within one year of determining such PCB Items were PCB waste and the deciding to dispose of such PCB Items is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(a)(1), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT XXXI**

(Storage of PCB Waste in Excess of One Year – Storage Area)

187. The preceding paragraphs are incorporated by reference.

188. Respondent determined over 250 PCB Large Capacitors stored in the Storage Area at the Facility to be PCB waste and decided to dispose of such PCB Items on or about June 24, 2008.

189. At the time of the May 25, 2010 TSCA CEI, which was one year and eleven months after such PCB Items had been determined to be PCB waste and the decision made to dispose of such PCB Items, EPA inspectors observed the PCB Items listed in Paragraph 188, above, at the Facility in storage for disposal.

190. Respondent's failure to dispose of the PCB Items listed in Paragraph 188, above, within one year of determining such PCB Items to be PCB waste and deciding to dispose of such PCB items is a violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(a)(1), for which a penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **III. PROPOSED CIVIL PENALTY**

190. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1) and (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (3), and (g), and Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), Complainant proposes the assessment a civil penalty against Respondent per day of non-compliance for each violation. The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, increased the maximum amount of civil penalties which can be assessed by EPA for each day of a violation of RCRA Subtitle C and TSCA Section 6(e) occurring on or after January 30, 1997 and on or before March 15, 2004 from \$25,000 to \$27,000, after March 15, 2004 and on or before January 12, 2009 to \$32,500, and after January 12, 2009, to \$37,600.

191. For the purpose of determining the amount of a civil penalty to be assessed under RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), EPA is required to take into account the seriousness of the violation and any good faith efforts by the Respondent to comply with applicable requirements (i.e., the "statutory factors"). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Enclosure A). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases.

192. For the purpose of determining the amount of a civil penalty to be assessed under TSCA, TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B) EPA is required to take into account the nature, circumstances, extent, and gravity of the of the violations, and, with respect to the violator, the ability to pay, effect 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. In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's April 9, 1990 Polychlorinated Biphenyl (PCB) Penalty Policy (Enclosure B) ("PCB Penalty Policy"). This PCB Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases.

193. Complainant will also consider, among other factors, Respondent's inability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for increasing or decreasing the civil penalty, as appropriate.

194. The proposed penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to Section 22.14(a)(4)(ii) of the Consolidated Rules of Practice, an explanation of the number and severity of violations is given below concerning the aforesaid Counts alleged in this Complaint.



195. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. § 22.19(a)(4).

**COUNT I - Owning and/or operating a hazardous waste storage facility without a permit or interim status**

196. The "potential for harm" arising from Respondent's storage of hazardous waste without a permit is "moderate." Respondent's failure to comply with the permitting requirements of RCRA and the authorized PaHWR constitutes a moderate potential for harm to human health, the environment and actual harm to the RCRA program. The permitting process is the backbone of the RCRA program and ensures that facilities that manage hazardous wastes handle them in a manner so as to minimize their risk to human health and the environment. Failure to obtain a permit or interim status prior to the treatment, storage and/or disposal of hazardous waste is evidence indicating that a facility is not instituting those practices and procedures required by RCRA for the safe management and handling of these waste, thereby, posing a risk to human health and the environment. Failure to obtain a permit and interim status also impedes EPA's ability to regulate hazardous waste activities by members of the regulated community, like Respondent, due to the fact that the RCRA regulatory program and Complainant rely upon the self-reporting of members of the regulated community.

197. Respondent's deviation from the regulatory requirements presented by Respondent's activities is "moderate." Respondent met some, but not all, of the conditions which they needed to meet in order to be exempt from permitting requirements.

198. *Economic Benefit of Non-compliance:* In addition to a gravity-based penalty for Count I, Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to obtain a permit or interim status prior to storing hazardous waste at the Facility. This component includes the cost savings of not disposing of hazardous wastes at appropriate intervals.

**COUNT II – Container Management**

199. *Gravity-Based Penalty Component:* The "potential for harm" arising from Respondent's failure to keep containers used for storage of hazardous waste closed at all times except when adding or removing waste at the Facility is moderate. Improper hazardous waste container management poses a significant risk to human health and the environment from potential releases and spills from such containers. Additionally, the failure to comply with the RCRA container management regulations constitutes actual harm to the RCRA program which relies upon members of the regulated community, like Respondent, to safely manage hazardous waste.

200. Respondent failed to keep a container used for storage of hazardous waste closed at all times except when adding or removing waste. Accordingly, the extent of deviation from the

regulatory requirements presented by Respondent's activities is "moderate."

201. *Economic Benefit of Non-Compliance:* In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent as a result of its failure to failed to keep containers used for storage of hazardous waste closed at all times except when adding or removing waste.

### **COUNT III – Universal Waste Management**

202. *Economic Benefit of Non-Compliance:* In addition to a gravity-based penalty for this *Gravity-Based Penalty Component:* The "potential for harm" arising from Respondent's failure to contain universal waste lamps in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the contents of the lamps, to mark the containers as required, and to demonstrate, by any of the methods set forth in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), the length of time that the universal waste lamps at its Facility had been accumulated from the date it became a waste or was received, is "moderate." Such failure poses a significant risk to human health and the environment and also impedes the successful implementation of the RCRA program which relies upon members of the regulated community, like Respondent, to comply with its requirements.

203. Respondent failed to properly manage at least 46 boxes of universal waste lamps. Accordingly, the extent of deviation from the regulatory requirements presented by Respondent's activities is "moderate."

204. *Economic Benefit of Non-Compliance:* In addition to a gravity-based penalty for this Count, Complainant shall also seek assessment of a penalty that takes into account the economic benefit gained by Respondent as a result of its failure to perform hazardous waste determinations.

### **COUNTS IV - VII – Failure to Mark a PCB Large Low Voltage Capacitor with the PCB Mark M<sub>L</sub> at the Time of Removal from Use**

205. *Rectifier A Area:* Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark PCB Articles and Equipment at the time such PCB Articles and Equipment are removed from service as required by 40 C.F.R. § 761.40(a)(3) and (5) is quantified as the "Circumstance Level" in the penalty matrix. Any person who is subject to 40 C.F.R. Part 761 is required to mark all PCB Large High or Low Voltage Capacitors with the PCB M<sub>L</sub> mark. All marks must be placed in a position on the exterior of the PCB items so that any person inspecting or servicing the marked PCB item can easily read the marks. Respondent failed to mark five Capacitors with PCB nameplates in the Rectifier A area. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. The extent category is *minor* because this violation is a non-disposal violation involving less than 50 Large Capacitors.

206. Rectifier E Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark PCB Articles and Equipment at the time such PCB Articles and Equipment are removed from service as required by 40 C.F.R. § 761.40(a)(3) and (5) is quantified as the "Circumstance Level" in the penalty matrix. Any person who is subject to 40 C.F.R. Part 761 is required to mark all PCB Large High or Low Voltage Capacitors with the PCB M<sub>L</sub> mark. All marks must be placed in a position on the exterior of the PCB items so that any person inspecting or servicing the marked PCB item can easily read the marks. Respondent failed to mark four Capacitors with the PCB Mark M<sub>L</sub>. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there no indication to a person unfamiliar with PCBs that PCBs are present. The extent category is *minor* because this violation is a non-disposal violation involving less than 50 Large Capacitors.

207. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark PCB Articles and Equipment at the time such PCB Articles and Equipment are removed from service as required by 40 C.F.R. § 761.40(a)(3) and (5) is quantified as the "Circumstance Level" in the penalty matrix. Any person who is subject to 40 C.F.R. Part 761 is required to mark all PCB Large High or Low Voltage Capacitors with the PCB M<sub>L</sub> mark. All marks must be placed in a position on the exterior of the PCB items so that any person inspecting or servicing the marked PCB item can easily read the marks. Respondent failed to mark four General Electric Pyranol Capacitors in the Basing Area. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. The extent category is *minor* because this violation is a non-disposal violation involving less than 50 Large Capacitors.

208. Second Floor Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark PCB Articles and Equipment at the time such PCB Articles and Equipment are removed from service as required by 40 C.F.R. § 761.40(a)(3) and (5) is quantified as the "Circumstance Level" in the penalty matrix. Any person who is subject to 40 C.F.R. Part 761 is required to mark all PCB Large High or Low Voltage Capacitors with the PCB M<sub>L</sub> mark. All marks must be placed in a position on the exterior of the PCB items so that any person inspecting or servicing the marked PCB item can easily read the marks. Respondent failed to mark the capacitors found in seventeen of the eighteen Girdler test sets located in the Second Floor Area. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. The extent category is *minor* because this violation is a non-disposal violation involving less than 50 Large Capacitors.

**COUNTS VIII - X – Failure to Mark an Area used to store PCBs and PCB Items with the PCB M<sub>L</sub> mark**

209. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark an area used to store PCBs and PCB Items with the PCB M<sub>L</sub> mark

as required by 40 C.F.R. § 761.40(a)(10) and 40 C.F.R. § 761.65(c)(3) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. Respondent failed to mark the Basing Area which was being utilized by Respondent to store PCB Items for disposal, specifically one PCB-contaminated transformer and at least one PCB Capacitor. The extent category is *minor* because this violation is a non-disposal violation involving less than 50 Large High or Low Voltage Capacitors, amounting to less than 220 gallons.

210. Second Floor Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark an area used to store PCBs and PCB Items with the PCB M<sub>L</sub> mark as required by 40 C.F.R. § 761.40(a)(10) and 40 C.F.R. § 761.65(c)(3) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. Respondent failed to mark the Second Floor Area which was being utilized by Respondent to store PCB Items for disposal, specifically seventeen PCB Large High or Low Capacitors. The extent category is *minor* because this violation is a non-disposal violation involving less than 20 Large Capacitors, amounting to less than 220 gallons.

211. Storage Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to mark an area used to store PCBs and PCB Items with the PCB M<sub>L</sub> mark as required by 40 C.F.R. § 761.40(a)(10) and 40 C.F.R. § 761.65(c)(3) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because it is considered a major marking violation. A major marking violation is a situation where, as here, there is no indication to a person unfamiliar with PCBs that PCBs are present. Respondent failed to mark the Storage Area which was being utilized by Respondent to store PCB Items for disposal, specifically 250 PCB Large High or Low Voltage Capacitors. The extent category is *major* because this violation is a non-disposal violation concerning over 250 Large High or Low Voltage Capacitors.

#### **COUNTS XI - XV – Failure to maintain records of monthly inspections of PCB Items in storage for disposal**

212. Switchgear Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain records of inspection for PCB Items in storage for disposal as required by 40 C.F.R. § 761.65(c)(5) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a significant recordkeeping violation. Respondent failed to maintain records of inspection of the Switchgear Area, which was being used to store PCB items for disposal. Fifteen Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid were stored for disposal in the Switchgear Area. The extent category is *significant* because this violation is a non-disposal violation concerning PCB Items

with over 220 gallons of liquid.

213. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain records of inspection for PCB Items in storage for disposal as required by 40 C.F.R. § 761.65(c)(5) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a significant recordkeeping violation. Respondent failed to maintain records of inspection of the Basing Area, which was being used to store PCB items for disposal, specifically one PCB-contaminated Transformer containing an unknown amount of liquid and fewer than fifty Large High or Low Voltage Capacitors. The extent category is *minor* because this violation is a non-disposal violation of one Transformer and fewer than fifty Large High or Low Voltage Capacitors.

214. Second Floor: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain records of inspection for PCB Items in storage for disposal as required by 40 C.F.R. § 761.65(c)(5) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a significant recordkeeping violation. Respondent failed to inspect and maintain records of inspection of the Second Floor Area, which was being used to store PCB items for disposal, specifically seventeen Large High or Low Voltage Capacitors. The extent category is *minor* because this violation is a non-disposal violation of fewer than 50 Large High or Low Voltage Capacitors.

215. Area Adjacent to Mechanical Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain records of inspection for PCB Items in storage for disposal as required by 40 C.F.R. § 761.65(c)(5) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a significant recordkeeping violation. Respondent failed to maintain records of inspection of the Area Adjacent to Mechanical Area, which was being used to store PCB items for disposal, specifically three 55 - gallon drums and one 35 - gallon drum, each marked with the PCB M<sub>L</sub> mark. The extent category is *minor* because this violation is a non-disposal violation of less than 220 gallons of liquid and/or fewer than 15 55 - gallon drums.

216. Storage Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain records of inspection for PCB Items in storage for disposal as required by 40 C.F.R. § 761.65(c)(5) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a significant recordkeeping violation. Respondent failed to inspect and maintain records of inspection of the Storage Area, which was being used to store PCB items for disposal, specifically over 250 PCB Large High or Low Voltage Capacitors. The extent category is *major* because this violation is a non-disposal violation of over 250 PCB Large High or Low Voltage Capacitors.

## **COUNTS XVI - XIX – Failure to Date PCB Items Removed from Service for Disposal**

217. Switchgear Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to date PCB Items removed from service for disposal as required by 40 C.F.R. § 761.65(c)(8) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because this violation is considered a "minor storage" violation. The definition of this category specifically includes the failure to date PCB Items placed in storage. In this instance, fifteen Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid were not marked with the date on which these PCB Items were removed from service for disposal. The extent category is *significant* because this violation is a non-disposal violation of PCB Items with over 220 gallons of liquid.

218. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to date PCB Items removed from service for disposal as required by 40 C.F.R. § 761.65(c)(8) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because this violation is considered a "minor storage" violation. The definition of this category specifically includes the failure to date PCB Items placed in storage. In this instance, one PCB-contaminated Transformer with unknown volume and fewer than 50 Large High or Low Voltage Capacitors were not marked with the date on which these PCB Items were removed from service for disposal. The extent category is *minor* because this violation is a non-disposal violation for PCB Items including one PCB-contaminated transformer and fewer than 50 PCB Large High or Low Voltage Capacitors.

219. Second Floor: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to date PCB Items removed from service for disposal as required by 40 C.F.R. § 761.65(c)(8) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because this violation is considered a "minor storage" violation. The definition of this category specifically includes the failure to date PCB Items placed in storage. In this instance, seventeen PCB Large High or Low Voltage Capacitors were not marked with the date on which these PCB Items were removed from service for disposal. The extent category is *minor* because this violation is a non-disposal violation of PCB Items concerning fewer than 50 PCB Large High or Low Voltage Capacitors.

220. Storage Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to date PCB Items removed from service for disposal as required by 40 C.F.R. § 761.65(c)(8) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because this violation is considered a "minor storage" violation. The definition of this category specifically includes the failure to date PCB Items placed in storage. In this instance, over 250 PCB Large High or Low Voltage Capacitors were not marked with the date on which these PCB Items were removed from service for disposal. The extent category is *major* because this violation is a non-disposal violation of PCB Items concerning over 250 PCB Large High or Low Voltage Capacitors.

**COUNTS XX-XXII - Failure to Store PCB Items in Areas with Adequate Curbing**

221. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to store for disposal PCB Items in an adequately curbed area as required by 40 C.F.R. § 761.65(b)(1)(ii) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because this violation is considered a "major storage" violation. In this instance, one PCB-contaminated Transformer with unknown volume and less than 50 PCB Large High or Low Voltage Capacitors were stored in the Basing Area, which did not have adequate curbing as defined by 40 C.F.R. § 761.65(b)(1)(ii). The extent category is *minor* because this violation involves one PCB contaminated Transformer and less than 50 PCB Large High or Low Voltage Capacitors.

222. Storage Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to store for disposal PCB Items in an adequately curbed area as required by 40 C.F.R. § 761.65(b)(1)(ii) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because this violation is considered a "major storage" violation. In this instance, over 250 PCB Large High or Low Voltage Capacitors were stored in the Storage Area, which did not have adequate curbing as defined by 40 C.F.R. § 761.65(b)(1)(ii). The extent category is *major* because this violation involves over 250 PCB Large High or Low Voltage Capacitors.

223. Second Floor Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to store for disposal PCB Items in an adequately curbed area as required by 40 C.F.R. § 761.65(b)(1)(ii) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *High Range, Level 2 Circumstance Level* because this violation is considered a "major storage" violation. In this instance, over seventeen PCB Large High or Low Voltage Capacitors were stored in the Storage Area, which did not have adequate curbing as defined by 40 C.F.R. § 761.65(b)(1)(ii). The extent category is *minor* because this violation involves less than 50 PCB Large High or Low Voltage Capacitors.

**COUNTS XXIII – XXVI Failure To Develop and Maintain Annual Records of PCBs and PCB Items**

224. Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's failure to maintain annual documents of PCBs and PCB Items as required by 40 C.F.R. § 761.180(a) is quantified as the "Circumstance Level" in the penalty matrix. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because this violation is considered a "minor use" violation. The Minor Use circumstance category in the *1990 PCB Penalty Policy* includes "Significant Recordkeeping" which is defined in part as: "no records, or major recordkeeping violations, by persons who manufacture, process or use PCBs. . . ." Any person who is subject to 40 C.F.R. Part 761 who owns or operates a facility using or storing at any one time at least 45 kilograms of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain at the facility all annual records and the written annual document of the disposition and inventory of PCBs and PCB items. The written annual document log must be prepared for

each facility by July 1 covering the previous calendar year (January through December). The annual records and the annual document log shall be available for inspection at the facility where they are maintained by authorized representatives of EPA during normal business hours. The records and documents must be maintained for at least three (3) years after the facility ceases using or storing PCBs and PCB Items. Triton had in use and/or in storage a total of over 250 PCB Large High or Low voltage capacitors. The extent category is *major* because the violation involves over 250 PCB Large High or Low Voltage Capacitors. Triton committed multiple violations of 40 C.F.R. § 761.180(a) by failing to maintain records of annual documents for PCB Transformers for the calendar years of 2005 - 2008. As per the *1990 PCB Penalty Policy*, a separate count shall be charged for each annual document missed during the prior three years, and one count for all documents missed from years four and beyond. Failing to maintain records of annual documents for calendar years 2006-2008 is each assessed as one violation for a total of three violations and failing to maintain records of annual documents for calendar years 2005 and earlier is assessed one violation. Therefore, Triton committed four violations of 40 C.F.R. § 761.180(a) by failing to maintain the required annual documents.

#### **COUNTS XXVII – XXXI Storage of PCB Waste in Excess of One Year**

225. Switchgear Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's storage of PCB in excess of one year in violation of 40 C.F.R. § 761.65(a)(1) is quantified as the "Circumstance Level" in the penalty matrix. Each year over the allowed one year of storage time constitutes one instance of violation. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a "minor storage" violation. The definition of a minor storage violation in the *1990 PCB Penalty Policy* includes storage of PCBs in excess of one year. Respondent stored 15 PCB Large High or Low Voltage Capacitors and three PCB-contaminated Transformers containing 384 gallons of liquid which had been removed from service in June 2008 in the Switchgear Area in excess of one year. The extent category is *significant* because this violation is a non-disposal violation of PCB Items with over 220 gallons of liquid.

226. Basing Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's storage of PCB in excess of one year in violation of 40 C.F.R. § 761.65(a)(1) is quantified as the "Circumstance Level" in the penalty matrix. Each year over the allowed one year of storage time constitutes one instance of violation. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a "minor storage" violation. The definition of a minor storage violation in the *1990 PCB Penalty Policy* includes storage of PCBs in excess of one year. Respondent stored a PCB-contaminated Transformer and fewer than 50 PCB Large High or Low Voltage Capacitors which had been removed from service in June 2008 in the Basing Area in excess of one year. The extent category is *minor* because this violation is a non-disposal violation of PCB Items in the amount of one transformer and under 50 Large Capacitors.

227. Second Floor Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's storage of PCB in excess of one year in violation of 40 C.F.R. § 761.65(a)(1) is quantified as the "Circumstance Level" in the penalty matrix. Each year over the allowed one



year of storage time constitutes one instance of violation. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a "minor storage" violation. The definition of a minor storage violation in the *1990 PCB Penalty Policy* includes storage of PCBs in excess of one year. Respondent stored seventeen PCB Large High or Low Voltage Capacitors which had been removed from service in June 2008 in the Second Floor Area in excess of one year. The extent category is *minor* because this violation is a non-disposal violation of PCB Items in the amount of less than 50 PCB Large High or Low Voltage Capacitors.

228. Area adjacent to Mechanical Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's storage of PCB in excess of one year in violation of 40 C.F.R. § 761.65(a)(1) is quantified as the "Circumstance Level" in the penalty matrix. Each year over the allowed one year of storage time constitutes one instance of violation. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a "minor storage" violation. The definition of a minor storage violation in the *1990 PCB Penalty Policy* includes storage of PCBs in excess of one year. Respondent stored three 55 - gallon drums and one 35 - gallon drum marked with the PCB M<sub>1</sub> mark. These drums were observed by PCB inspectors in August 2008 and in May 2010, a period of time in excess of one year, in the Area adjacent to Mechanical Area. The extent category is *minor* because this violation is a non-disposal violation of PCB Items involving less than of less than 220 gallons of liquid and/or fewer than 15 55 - gallon drums.

229. Storage Area: Under the *1990 PCB Penalty Policy*, the probability of damages from Respondent's storage of PCB in excess of one year in violation of 40 C.F.R. § 761.65(a)(1) is quantified as the "Circumstance Level" in the penalty matrix. Each year over the allowed one year of storage time constitutes one instance of violation. This violation is assigned the *Medium Range, Level 4 Circumstance Level* because it is considered a "minor storage" violation. The definition of a minor storage violation in the *1990 PCB Penalty Policy* includes storage of PCBs in excess of one year. Respondent stored over 250 PCB Large High or Low Voltage Capacitors which had been removed from service in June 2008 in the Switchgear Area in excess of one year. The extent category is *major* because this violation is a non-disposal violation of PCB Items with over 250 PCB Large High or Low Voltage Capacitors.

## **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

230. Within thirty (30) days of receipt of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact, conclusion of law and/or the appropriateness of any penalty amount proposed to be assessed for the violations alleged in this Complaint. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or

arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

231. If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission by Respondent of all facts alleged in the Complaint and a waiver by Respondent of the right to a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein against Respondent without further proceedings.

232. Any hearing requested and granted will be conducted in accordance with the Consolidated Rules of Practice. Hearings will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice.

233. Respondent's Answer and all other documents that Respondent files in this action should be sent to:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

234. In addition, a copy of Respondent's Answer should be sent to Joyce A. Howell, Esq., the attorney assigned to represent EPA in this matter, at:

Joyce A. Howell, Esq. (3RC30)  
Senior Assistant Regional Counsel  
Land and Chemicals Division  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

## **VI. SETTLEMENT CONFERENCE**

235. Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA and TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.

236. In the event settlement is reached, the terms shall be expressed in a written Final Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the Respondent's right to contest the allegations in the

Complaint or the amount of penalties agreed to in the Consent Agreement and its right to appeal the proposed Final Order accompanying the Consent Agreement.

237. If you wish to arrange a settlement conference or have legal questions concerning this matter, please contact Joyce A. Howell, Senior Assistant Regional Counsel, at (215) 814-2644. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

## **VII. QUICK RESOLUTION**

238. EPA has not demanded or proposed a specific penalty in this Complaint, but will do so at a later date in a prehearing exchange of information, as provided in the Consolidated Rules of Practice at 40 C.F.R. §22.19(a)(3). Accordingly, the Quick Resolution provisions of the Consolidated Rules of Practice at 40 C.F.R. § 22.18 do not apply at this time.

239. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Joyce A. Howell  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

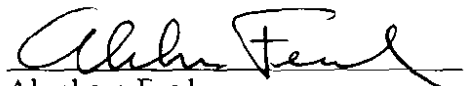
and

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

### VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

240. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor Regional Judicial Officer, may have an *ex parte* communication with the trial staff or the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with, among others the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, and the Regional Judicial Officer after issuance of the Complaint.

Date: 9/28/11

  
Abraham Ferdas  
Director  
Land and Chemicals Division

### REFERENCES AND ENCLOSURES

- A. June 2003 - RCRA Civil Penalty Policy (enclosed).
- B. April 9, 1990 PCB Penalty Policy (enclosed)
- C. Consolidated Rules of Practice - 40 C.F.R. Part 22 (enclosed).
- D. 40 C.F.R. § 19.4 (chart) (enclosed)
- E. Pennsylvania Regulations Governing Hazardous Waste, authorized by EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926 (enclosed).

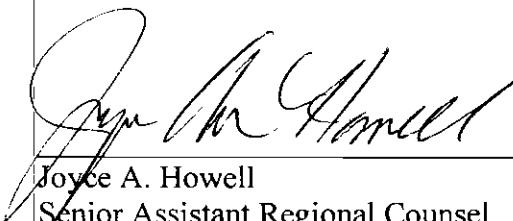


Raymond Kwong  
President  
Triton Services, Inc.  
26 Mullen Lane  
Lothain, MD 20711

Scott LaScala  
Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801  
Registered Agent for Triton Services, Inc.

Dated:

*9/28/2011*



Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street