

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

RECEIVED
MAY 13 2009
MAY 13 2009

In the Matter of:	:	
	:	
Cycle Chem, Inc.	:	U.S. EPA Docket No. TSCA-03-2009-0209
201 S. 1st Street	:	
Elizabeth, New Jersey 07206	:	
	:	
Respondent.	:	
	:	
Cycle Chem, Inc.	:	Proceeding under Sections 15 and 16
550 Industrial Drive	:	of the Toxic Substances Control Act,
Lewisberry, Pennsylvania 17339	:	15 U.S.C. §§ 2614 and 2615
	:	
Facility.	:	

ADMINISTRATIVE COMPLAINT

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Sections 15 and 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2614 and 2615, the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“*Consolidated Rules*”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. All references and citations herein to the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, are to the July 1, 2003 - July 1, 2008 editions of the Code of Federal Regulations. The copy of the *Consolidated Rules* that is enclosed with this Complaint is from the July 1, 2008 edition of the Code of Federal Regulations.

The Administrator of EPA has delegated the authority to file administrative complaints against alleged violators of TSCA for the purpose of proposing civil penalties, as provided in TSCA, to the Regional Administrators of EPA. This authority has been further delegated in EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division and also to the Associate Director, Office of Toxics and Pesticides, Land and Chemicals Division, by EPA Delegation No. 12-2-A.

The Respondent in this action is Cycle Chem, Inc. The Complaint alleges violations by Respondent of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761, which occurred with regard to the Respondent's operation of a facility located at 550 Industrial Drive, Lewisberry, Pennsylvania 17339.

In support of this Complaint, the Director of the Land and Chemicals Division, EPA, Region III ("Complainant"), alleges the following:

II. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. The United States Environmental Protection Agency ("EPA") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to TSCA Sections 6(e), 15 and 16, 15 U.S.C. §§ 2605(e), 2614 and 2615, and 40 C.F.R. §§ 22.1(a)(5) and 22.4(c) of the *Consolidated Rules*.
2. The Respondent, Cycle Chem, Inc., is a New Jersey corporation with a business address of 201 S. 1st Street, Elizabeth, New Jersey 07206-1502.
3. Respondent is registered to do business in the Commonwealth of Pennsylvania and maintains an office in the Township of Fairview, Pennsylvania with a mailing address of 550 Industrial Drive, Lewisberry, Pennsylvania 17339.

4. Respondent is, and at all times relevant to the violations alleged in this Complaint was, a “person” as defined in 40 C.F.R. § 761.3.
5. Respondent is, and at all times relevant to the violations alleged in this Complaint was, the owner and operator of a facility located at 550 Industrial Drive, Lewisberry, Pennsylvania 17339 (the “Facility”), where the Respondent engages in hazardous waste receipt, collection, sampling, treatment, storage, shipment and associated administrative activities.
6. Respondent purchased the Facility from Remtech Environmental Lewisberry, Inc. (“Remtech”) in the year 1999.
7. 40 C.F.R. § 761.3 provides that the term “Manifest” means “the shipping document EPA form 8700–22 and any continuation sheet attached to EPA form 8700–22, originated and signed by the generator of PCB waste in accordance with the instructions included with the form and subpart K of this part.”
8. 40 C.F.R. § 761.3 provides, in pertinent part, that the term “PCB” means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
9. 40 C.F.R. § 761.3 provides that the term “PCB Container” means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface has been in direct contact with PCBs.
10. 40 C.F.R. § 761.3 provides that the term “PCB Item” means any PCB Article, PCB Article Container, PCB Container or PCB Equipment, that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
11. 40 C.F.R. § 761.3 provides that the term “PCB Waste” means those PCBs and PCB Items that are subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D.
12. 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, 15 U.S.C. §§ 2604 or 2605.
13. 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.

14. Duly authorized representatives of EPA performed a TSCA Section 6(e) PCB Inspection at the Facility on September 25, 2003.
15. At the time of the September 25, 2003 inspection, Respondent maintained at the Facility certain records which documented the Respondent's receipt of unmanifested PCB Waste from third party generators and Respondent's storage of such PCB Waste at the Facility prior to disposal.
16. On January 5, 2006, EPA issued Respondent a Notice of Noncompliance ("NON") for instances of regulatory noncompliance identified as a result of the September 25, 2003 EPA inspection of the Facility. The NON cited Respondent for failure to prepare timely written PCB Annual Document Logs pertaining to PCBs and PCB Items stored and processed on-site at the Facility during calendar years 1999 through 2002, as required pursuant to 40 C.F.R. § 761.180(a), and for its failure during such time period to submit reports regarding unmanifested PCB Waste (as the term "manifest" is defined at 40 C.F.R. § 761.3) to the EPA Regional Administrator within fifteen (15) days after the Facility's receipt of such waste, as required pursuant to 40 C.F.R. § 761.211(c).
17. In the January 5, 2006 NON, EPA also advised the Respondent, with respect to the on-site storage of PCB Waste, that "[a]ccording to [40 C.F.R.] §761.3, if a facility's storage of PCB waste at no time exceeds a total of 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to receive EPA approval" and that so long as the Respondent "does not store more than 500 gallons of PCB waste at any one time, [Respondent] need not seek approval from EPA to act as a commercial storer."
18. On April 6, 2006, Respondent disclosed to EPA in writing that Respondent discovered, on March 16, 2006, that a 30 gallon shipment of waste received at the Facility and destined for off-site fuel blending, had tested positive for PCBs at regulated levels and was PCB Waste.
19. On June 25, 2007, a duly authorized EPA representative (the "EPA Inspector") conducted another TSCA Section 6(e) PCB Inspection at the Facility. The purpose of this inspection was to evaluate Respondent's compliance with TSCA PCB regulatory requirements at the Facility.
20. Subsequent to June 25, 2007, the EPA Inspector requested and received from the Respondent additional information and documentation, including manifests of hazardous waste shipments and copies of PCB logs maintained by the Respondent that documented Respondent's receipt and storage of PCB Waste at the Facility during the years 2004 through 2007.

COUNT I

(Commercial Storage of PCB Waste Without EPA Storage Approval)

21. The allegations of paragraphs 1 through 20 of this Complaint are incorporated herein by reference.
22. 40 C.F.R. § 761.3 defines “storage for disposal” to mean “temporary storage of PCBs that have been designated for disposal.”
23. 40 C.F.R. § 761.3 defines a “commercial storer of PCB waste” to include “the owner or operator of each facility that is subject to the PCB storage unit standards of [40 C.F.R.] § 761.65(b)(1) or (c)(7), or meets the alternate storage criteria of [40 C.F.R.] § 761.65(b)(2), and who engages in storage activities involving either PCB waste generated by others or that was removed while servicing equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. A generator who only stores its own waste is subject to the storage requirements of § 761.65, but is not required to obtain approval as a commercial storer. If a facility’s storage of PCB waste generated by others at no time exceeds 500 gallons of liquid and/or non-liquid material containing PCBs at regulated levels, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste. . . ”.
24. 40 C.F.R. § 761.65 “applies to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater [(hereinafter, “regulated PCB Waste”)].
25. 40 C.F.R. § 761.65(d)(1) provides, in relevant part and with exemptions not herein applicable, that “[c]ommercial storers of PCB waste are prohibited from storing any PCB waste at their facilities. . . unless they have submitted . . . a complete application for a final storage approval under paragraph (d)(2) of this [40 C.F.R.] section [761.65].”
26. 40 C.F.R. § 761.65(d)(2) provides, *inter alia*, that it is “the Regional Administrator for the region in which the storage facility is located (or the appropriate official at EPA headquarters, if the commercial storage area is ancillary to a disposal facility for which an official at EPA headquarters has approval authority) . . . [who] shall grant written final approval to engage in the commercial storage of PCB waste upon a determination that the criteria in paragraph (d)(2)(i) through (d)(2)(vii) of this [40 C.F.R.] section [761.65] have been met by the applicant. . . ”.

27. 40 C.F.R. § 761.65(d)(3) provides, in relevant part, that “[a]pplicants for storage approvals shall submit a written application that includes any relevant information bearing upon the qualifications of the facility’s principals and key employees to engage in the business of commercial storage of PCB wastes. This information shall include, but is not limited to” such information as is further described in 40 C.F.R. § 761.65(d)(3)(i) through (x).
28. 40 C.F.R. § 761.65(d)(6) further provides, in relevant part, that “[s]torage areas at RCRA-permitted facilities may be exempt from the separate TSCA storage approval requirements in this paragraph (d) [of 40 C.F.R. § 761.65] upon a showing to the Regional Administrator’s satisfaction that the facility’s existing RCRA closure plan is substantially equivalent to this rule’s closure plan standards, and that such facility’s closure cost estimate and financial assurance demonstration account for maximum PCB waste inventories, and the requirements of paragraph (d)(3)(i) through (d)(3)(v) and (d)(3)(vii) of this [40 C.F.R.] section [761.65] are met. . .”.
29. 40 C.F.R. § 761.77(a) alternatively provides, in relevant part, that, “[n]otwithstanding any other provision of this part, the EPA Regional Administrator for the region in which a PCB disposal or PCB commercial storage facility described in paragraphs (b) and (c) of this section is located may issue a TSCA PCB Coordinated Approval to the persons described in those paragraphs if the conditions listed in this section are met. A TSCA PCB Coordinated Approval will designate the persons who own and who are authorized to operate the facilities described in paragraphs (b) and (c) of this section and will apply only to such persons. All requirements, conditions, and limitations of any other permit or waste management cited or described in paragraphs (b) and (c) of this section, as the technical or legal basis on which the TSCA PCB Coordinated Approval is issued, are conditions of the TSCA PCB Coordinated Approval.
30. 40 C.F.R. § 761.77(a)(1) additionally provides, in relevant part, that “[p]ersons seeking a TSCA PCB Coordinated Approval shall submit a request for approval . . . to the EPA Regional Administrator for the Region in which the activity will take place.”
31. On April 1, 1999, Respondent mailed a letter and an attached application for “Ownership Transfer of TSCA Commercial PCB Storage Approval” to the EPA Region III Regional Administrator advising that Respondent was in the process of “finalizing the purchase” of the Facility from Remtech and, through the attached application, was seeking “to change the ownership of the existing permit” to the Respondent on the “closing date” of the forthcoming transfer of Facility ownership in order to allow Respondent to “continue operations under the current approval” so that “PCB Storage operations could continue uninterrupted.”

32. The “existing permit” referenced in the Respondent’s April 1, 1999 letter and the “TSCA Commercial PCB Storage Approval” referenced in its attached application was an EPA Approval, dated August 1, 1997 and expiring on October 1, 2000, pursuant to which EPA authorized Remtech to accept at the Facility, for storage and consolidation, all forms of PCB wastes in containers and electrical equipment, and to engage in PCB hauling activities.
33. The Respondent did not submit to the EPA Regional Administrator of EPA Region III, or to any official at EPA headquarters, an application seeking authorization to engage in the commercial storage of PCB Waste at the Facility at any time subsequent to October 1, 2000.
34. At no time subsequent to October 1, 2000 has the EPA Regional Administrator of EPA Region III or any EPA headquarters official granted Respondent written, final approval to engage in the commercial storage of PCB Waste at the Facility pursuant to 40 C.F.R. § 761.65(d)(2).
35. The storage units or areas at the Respondent’s Facility are RCRA permitted, within the meaning of 40 C.F.R. § 761.65(b)(6). However, the Respondent has at no time made a showing to the EPA Region III Regional Administrator’s “satisfaction”, pursuant to 40 C.F.R. § 761.65(d)(6), that: the Facility’s existing RCRA closure plan is substantially equivalent to the closure plan standards of 40 C.F.R. § 761.65(e); the Facility’s closure cost estimate and financial assurance demonstration account for maximum PCB waste inventories; and/or that each of the requirements of 40 C.F.R. § 761.65(d)(3)(i) through (d)(3)(v) and (d)(3)(vii) have been met.
36. At no time has the EPA Regional Administrator of EPA Region III, or any official at EPA Headquarters, issued a TSCA PCB Coordinated Approval to the Respondent for the commercial storage of PCB Waste at the Facility pursuant to 40 C.F.R. § 761.77(a).
37. On each of the days of July 12, 2004 through February 24, 2005, May 9, 2005 through September 8, 2005, September 13, 2005 through December 20, 2006 and February 5, 2007 through June 28, 2007 — a total of nine hundred and seventy-seven (977) days — Respondent stored greater than 500 gallons of regulated PCB Waste [i.e., PCBs and PCB Items subject to the disposal requirements of 40 C.F.R. Part 761, Subpart D] that was generated by others at an area(s) of its Facility.
38. By and through the actions identified and described in paragraph 37, immediately above, Respondent became a “commercial storer of PCB waste” that was subject to the commercial storage “approval” requirements of 40 C.F.R. § 761.65(d) or, alternatively, the TSCA PCB Coordinated Approval requirements of 40 C.F.R. § 761.77(a).

39. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(d)(2) on each of the nine hundred and seventy-seven (977) days referenced in paragraph 37, above, by engaging in the commercial storage, at its Facility, of greater than 500 gallons of regulated PCB Waste generated by others on each of those days without: (a) obtaining an EPA commercial storage approval pursuant to the requirements of 40 C.F.R. § 761.65(d)(2); (b) qualifying for an exemption from the requirement to obtain an EPA commercial storage approval pursuant to the requirements of 40 C.F.R. § 761.65(d)(2); or (c) obtaining a TSCA PCB Coordinated Approval, in lieu of an EPA commercial storage approval, pursuant to the requirements of 40 C.F.R. § 761.77(a).

COUNT II

(Failure to Maintain PCB Annual Documents)

40. The allegations of paragraphs 1 through 39 of this Complaint are incorporated herein by reference.
41. 40 C.F.R. § 761.180(b) provides, in relevant part, that: “[b]eginning February 5, 1990, each owner or operator of a facility . . . used for the commercial storage. . . of PCBs and PCB Items shall maintain annual records on the disposition of all PCBs and PCB Items at the facility and prepare and maintain a written annual document log that includes the information required by paragraph (b)(2) of this [40 C.F.R.] section [761.180] for PCBs and PCB Items that were handled as PCB waste at the facility. The written annual document log must be prepared by July 1 for the previous calendar year (January through December). The written annual document log shall be maintained for at least 3 years after the facility is no longer used for the storage or disposal of PCBs and PCB Items. . . . The annual records shall be maintained for the same period. The annual records and written annual document log shall be available at the facility for inspection by authorized representatives of the EPA. All records and annual documents required to be prepared and maintained by this section prior to February 5, 1990 shall continue to be maintained at the facility for the same time as the annual records and the annual document log. The annual document required for 1989 shall cover the period from January 1, 1989 to February 5, 1990.”
42. 40 C.F.R. § 761.180(b)(2) further provides, in relevant part, that the written annual document log shall include the following:
- (i) All Certificates of Disposal that have been generated or received by the facility during the calendar year [;]

(ii) For each manifest generated or received by the facility during the calendar year, the unique manifest number and the name and address of the facility that generated the manifest and the following information: . . . (C) The unique number assigned by the generator identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the PCB waste in kilograms in each PCB Container, the first date PCB waste placed in each PCB Container was removed from service for disposal, the date it was received at the facility, the date each PCB Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed of (if known). . . . (E) Disposers of PCB waste shall include the confirmed date of disposal for items in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(D) of this [40 C.F.R.] section [761.180].

(iii) For . . . any PCB waste that was not manifested to the facility, the information required under paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E) of this [40 C.F.R.] section [761.180].

43. At all times relevant to the allegations herein, the Respondent was a “commercial storer” of “PCBs” and “PCB Items” that were handled as “PCB Waste” at the Facility, as those terms are defined at 40 C.F.R. § 761.3.
44. In each of the calendar years 2004 and 2005, the Facility received “PCB Containers” and “PCB Waste”, including “PCB Waste” that was not “manifested” to the Facility, as the terms “PCB Container”, “PCB Waste” and “manifest” are defined at 40 C.F.R. § 761.3.
45. At the time of the June 25, 2007 Facility Inspection referenced in Paragraph 19, above, the Respondent had not prepared and did not maintain calendar year 2004 and 2005 written annual document logs of the disposition of PCBs and PCB Items from the Facility.
46. Respondent twice violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(b), by failing to prepare and to maintain written annual document logs of the disposition of PCBs and PCB Items from the Facility that included all of the information required pursuant to 40 C.F.R. § 761.180(b)(2), by July 1, 2005 for the 2004 calendar year and by July 1, 2006 for the 2005 calendar year.

COUNT III

(Failure to Report Unmanifested PCB Waste to the EPA Regional Administrator)

47. The allegations of paragraphs 1 through 46 of this Complaint are incorporated herein by reference.

48. 40 C.F.R. § 761.211(c) provides, in relevant part, that “[w]ithin fifteen (15) days after receiving [] unmanifested PCB waste, the owner or operator [of a commercial storage facility] shall prepare and submit a report to the Regional Administrator for the Region in which the commercial storage or disposal facility is located and to the Regional Administrator for the Region in which the PCB waste originated, if known. The report may be submitted on Form 8700-13B, or by a written letter designated “Unmanifested Waste Report”. The report shall include the following information: (1) The EPA identification number, name, and address of the PCB commercial storage or disposal facility[;] (2) The date the commercial storage or disposal facility received the unmanifested PCB waste[;] (3) The EPA identification number, name, and address of the generator and transporter, if available[;] (4) A description of the type and quantity of the unmanifested PCB waste received at the facility[;] (5) A brief explanation of why the waste was unmanifested, if known[;] (6) The disposition made of the unmanifested waste by the commercial storage or disposal facility, including: (i) If the waste was stored or disposed by that facility, was the generator identified and was a manifest subsequently supplied[; and] (ii) If the waste was sent back to the generator, why and when.”
49. On at least eighty-five (85) separate occasions during the time period of July 1, 2004 through June 28, 2007, Respondent received at the Facility unmanifested (as the term “manifest” is defined at 40 C.F.R. § 761.3) waste containing PCBs at 50 ppm or greater (i.e., “PCB Waste”) from various off-site generators.
50. On eighty-four (84) of the above-referenced (85) occasions that the Respondent received unmanifested PCB Waste at the Facility from off-site generators during the time period of July 1, 2004 through June 28, 2007, Respondent failed to submit required unmanifested waste reports to the EPA Region III Regional Administrator and/or to the EPA Regional Administrator for the EPA Region in which the PCB waste originated within fifteen (15) days after receiving each such unmanifested PCB waste shipment at the Facility.
51. On one (1) occasion that the Respondent received unmanifested PCB Waste at the Facility from an off-site generator during the time period of July 1, 2004 through June 28, 2007, as referenced in paragraph 18, above, the Respondent did submit an unmanifested waste report to the EPA Region III Regional Administrator. However, such unmanifested waste report did not include the date that the Facility received the unmanifested PCB waste or the EPA identification number, name, or address of the generator or transporter of the waste, as required pursuant to 40 C.F.R. § 761.211(c)(2) and (3) and, on information and belief, such unmanifested waste report was not provided to the EPA Region in which the PCB waste originated, despite Respondent’s knowledge as to the origin of the PCB Waste.

52. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.211(c) on each of the eighty-five (85) occasions referenced in paragraphs 48 and 49, immediately above, by failing to submit required unmanifested waste reports that met each of the requirements of 40 C.F.R. § 761.211(c)(1) through (6) to the EPA Region III Regional Administrator and/or to the EPA Regional Administrator for the EPA Region in which the PCB waste originated within fifteen (15) days after receiving each such unmanifested PCB waste shipment at the Facility.

III. CIVIL PENALTY

TSCA Section 16(a)(1) and (2), 15 U.S.C. § 2615(a)(1) and (2), authorize the Administrator of EPA to assess by order a civil penalty in an amount of up to \$25,000.00 for each violation of TSCA Section 15, 15 U.S.C. § 2614. Pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, as codified at 40 C.F.R. Part 19 (“*Adjustment of Civil Monetary Penalties for Inflation*”), and as amended at 73 Fed. Reg. 75340 - 46 (Dec. 11, 2008) and 74 Fed. Reg. 626 - 29 (Jan. 7, 2009), this amount has been adjusted up to \$27,500.00 per violation per day for each violation of TSCA Section 15 that occurred from January 30, 1997 through March 15, 2004, up to \$32,500.00 per violation per day for each violation of TSCA Section 15 that occurred after March 15, 2004 through January 12, 2009, and \$37,500.00 per violation per day for each violation of TSCA Section 15 that occurred or occurs after January 12, 2009. See the December 29, 2008 EPA implementing Memorandum entitled “*Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)*”.

For purposes of determining the amount of any civil penalty to be assessed for a violation of TSCA Section 15, 15 U.S.C. § 2614, TSCA Section 16, 15 U.S.C. § 2615, requires Complainant to take into account the nature, circumstances, extent, and gravity of the violation or

violations and, with respect to the violator, the violator's ability to pay, effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require ("statutory factors").

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, in accordance with the requirements of 40 C.F.R. § 22.19(a)(4). At such time, Complainant will file a document specifying a proposed civil penalty for each of the violations alleged in this Complaint. In developing such a civil penalty proposal, the Complainant will take into account the particular facts and circumstances of this case which are available and known to the Complainant, with specific reference to the statutory factors set forth in TSCA Section 16, 15 U.S.C. § 2615, and to EPA's April 9, 1990 *Polychlorinated Biphenyls (PCB) Penalty Policy* ("PCB Penalty Policy"), a copy of which is enclosed with this Complaint. The PCB Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. If, upon Complainant's proposal of a specific civil penalty, Respondent contends that it does not have the ability to pay such proposed penalty or that such proposed penalty will have an adverse effect on its ability to continue to do business, it is Respondent's responsibility to provide financial information to Complainant to support and establish any such contention(s).

In applying the above statutory factors to the Count I allegations that the Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(d)(2),

by engaging in the commercial storage, at its Facility, of greater than 500 gallons of regulated PCB Waste generated by others without obtaining an EPA commercial storage approval, qualifying for an exemption from the requirement to obtain an EPA commercial storage approval, or obtaining a TSCA PCB Coordinated Approval in lieu of an EPA commercial storage approval, Complainant's considerations will include, but may not be limited to: the extremely large number — 977 — of days of violation; the repeat occurrence and the ongoing nature of the violations; the significant excess (over 500 gallons) volumes of PCB Waste that Respondent improperly stored on-site at the Facility for lengthy durations of time; and, the Respondent's continued violation of the commercial storage approval requirements even after receiving a January 5, 2006 NON from EPA that specifically explained and highlighted such requirements (*i.e.*, Respondent's "knowledge" and "culpability"). In light of each of these facts and circumstances, Complainant considers the violations alleged in Count I of this Complaint to constitute high severity and major deviation non-disposal violations that each posed a significant degree or likelihood of harm to human health and the environment.

In applying the above statutory factors to the Count II allegations that the Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(b), by failing to prepare timely and to maintain calendar year 2004 and 2005 annual written document logs of the disposition of PCBs and PCB Items from the Facility that included all required information, Complainant's considerations will include, but may not be limited to: the fact that the Respondent did have available, at the time of the June 25, 2007 inspection, information necessary to prepare the essential elements of its 2004 and 2005 written annual document logs;

the fact that information necessary to the preparation of the 2004 written annual document log was maintained at an alternative location, rather than at the Facility; and the fact that the Respondent's violation of the written annual document log requirements occurred even after the Respondent's receipt of a January 5, 2006 NON from EPA that specifically explained and highlighted the similar written annual document log requirements for generators of PCB Waste that are set forth at 40 C.F.R. § 761.180(a). In light of each of these facts and circumstances, Complainant considers the violations alleged in Count II of this Complaint to constitute low severity non-disposal violations that posed a minor degree or likelihood of harm to human health and the environment.

In applying the above statutory factors to the Count III allegations that the Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.211(c) on each of eighty-five (85) occasions by failing to submit required unmanifested waste reports that met each of the requirements of 40 C.F.R. § 761.211(c)(1) through (6) within fifteen (15) days after receiving unmanifested PCB waste shipment at the Facility, Complainant's considerations will include, but may not be limited to: Respondent's complete failure to submit required unmanifested waste reports on 84 of the 85 occasions cited; Respondent's failure to include all required information on the one occasion when a report was submitted; and the Respondent's continued violation of the requirement to submit unmanifested waste reports to EPA even after receiving a January 5, 2006 NON from EPA that specifically explained and highlighted such requirements. In light of each of these facts and circumstances, Complainant considers the violations alleged in Count III of this Complaint to constitute high severity and major deviation

non-disposal violations that each posed a significant degree or likelihood of harm to human health and the environment.

Complainant notes that facts pertaining to the Respondent's receipt of the January 5, 2006 NON are relevant to Complainant's assessment of the Respondent's "knowledge" and "culpability" for the violations herein at issue, but are not viewed by Complainant as a relevant penalty consideration in EPA's evaluation of the Respondent's "history of prior such violations", given that the PCB Penalty Policy instructs that "a prior notice of noncompliance does not constitute a prior violation for the purposes of penalty assessment, since no opportunity has been provided to contest the notice." *See, PCB Penalty Policy* at p. 16.

To the extent that and facts or circumstances which are unknown to Complainant at the time that Complainant calculates and proposes a civil penalty in this proceeding later become known to the Complaint (e.g., information including, but not limited to, Respondent's ability to pay the proposed civil penalty and/or to continue in business after payment of the proposed civil penalty), such facts and circumstances also may be considered as a basis for adjusting any civil penalty proposed by Complainant in this proceeding. Any civil penalty that is proposed by Complainant in this proceeding shall not be deemed, and shall not constitute, a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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 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. Such a statement is deemed to be a denial of the allegation. 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.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver 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 without further proceedings.

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

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

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

In addition, a copy of Respondent's Answer should be sent to Mr. A.J. D'Angelo, the attorney assigned to represent EPA in this matter, at the following address:

A.J. D'Angelo (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

V. SETTLEMENT CONFERENCE

EPA encourages settlement of a proceeding at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed penalty. HOWEVER, THE REQUEST FOR A SETTLEMENT CONFERENCES DOES NOT RELIEVE RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER TO THIS COMPLAINT.

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. *See*, 40 C.F.R. § 22.18(a).

In the event settlement is reached with Respondent, the terms shall be expressed in a written 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 by Respondent shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact Mr. A.J. D'Angelo, Esq., Senior Assistant Regional Counsel, at (215) 814-2480 prior to the expiration of the thirty (30) day period following receipt of this Complaint. 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 Respondent's receipt of this Complaint.

VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS


The following EPA offices and the staffs thereof are designated as the trial staff to represent the Agency as a party in this case: the EPA Region III Office of Regional Counsel, the EPA Region III Land and Chemicals Division, the Office of the Assistant Administrator for Prevention, Pesticides and Toxic Substances, and the Office of the Assistant Administrator for Enforcement and Compliance Assurance. From the date of the issuance of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, nor any person who is likely to advise these officials, may have an ex parte communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the

*In the Matter of:
Cycle Chem, Inc.*

*Complaint and Notice of Opportunity for Hearing
Docket No. TSCA-03-2009-0209*

Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or Regional Judicial Officer after issuance of a Complaint.

6/25/09
Date


Abraham M. Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

JUN 29 2009 10:06

In the Matter of: :
 :
Cycle Chem, Inc. : **U.S. EPA Docket No. TSCA-03-2009-0209**
201 S. 1st Street :
Elizabeth, New Jersey 07206 :
 :
 :
Respondent. :
 :
Cycle Chem, Inc. : **Proceeding under Sections 15 and 16**
550 Industrial Drive : **of the Toxic Substances Control Act,**
Lewisberry, Pennsylvania 17339 : **15 U.S.C. §§ 2614 and 2615**
 :
 :
Facility. :

CERTIFICATE OF SERVICE


I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 5th Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Administrative Complaint and of the Attachments A and B referenced therein, as well as two copies of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules*"), 40 C.F.R. Part 22.

I further certify that on the date set forth below, I caused a true and correct copy of each of the above-referenced documents to be mailed via Federal Express, Standard Overnight Delivery, to the following persons at the following addresses:

FedEx Tracking No.
8665 3113 9641
Mr. Michael Persico
President
Cycle Chem, Inc.
201 S. 1st Street
Elizabeth, NJ 07206-1502

FedEx Tracking No.
8663 6139 4821
Mr. Mark C. Kelly, Esquire
Kelly & Hazen
380 Lexington Avenue
Suite 4400
New York, NY 10168
(Counsel for Cycle Chem, Inc.)

6/29/2009
Date


A.J. DiAngelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480