

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 SEP 28 AM 0:42
REGION 8
Docket No. TSCA-08-2007-0015

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
TW Services, Inc.)
1606 NE 3rd Street)
Madison, SD 57042)
)
Respondent.)
_____)

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act (TSCA, 15 U.S.C. §2615(a). The United States Environmental Protection Agency ("EPA") regulations governing polychlorinated biphenyls ("PCBs") authorized by TSCA are set out in part 761 of Title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. §2614. The rules for this proceeding are the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*" ("*Rules of Practice*"), 40 CFR part 22, a copy of which is enclosed.
2. The undersigned EPA officials have been properly delegated the authority to issue this action.
3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. section 2614, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.
5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, U. S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, within 30 days of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of the

Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the *Rules of Practice* for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the *Rules of Practice* for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

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

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Mr. Dana J. Stotsky, Esq., at 1-800-227-9441, extension 312-6905, or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

8. EPA has jurisdiction of this matter under section 16 of TSCA, 15 U.S.C. § 2615.

9. Respondent, TW Services, Inc., a corporation in good standing in the State of South Dakota, is a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.
10. Respondent was, at all times relevant to this action, the owner and operator of the facility located at 1606 NE 3rd Street, Madison, SD 57042.
11. On or about August 9, 2006, Ms. Kim P. Le, an authorized EPA inspector, conducted an inspection of Respondent's facility, with the consent of Respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of respondent for the inspection.
12. The PCB regulations define the term "PCB Items" as:

"PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs." 40 C.F.R. section 761.3.
13. The EPA's PCB regulations require timely inspection of all stored PCB Items:

(5) All PCB Items in storage shall be checked for leaks at least once every 30 days. Any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers. Any spilled or leaked materials shall be immediately cleaned up and the materials and residues containing PCBs shall be disposed of in accordance with section 761.61 [remediation waste disposal rule]. Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with section 761.180(a) and (b). 40 C.F.R. section 761.65(c)(5).
14. The EPA's PCB regulations define "*disposal*" of PCBs to include "spills, leaks, and other uncontrolled discharges of PCBs..." 40 C.F.R. § 761.3.
15. The PCB regulations define the term "*leak or leaking*" to mean any instance in which a PCB Article, PCB Container, or PCB Equipment has PCBs on any portion of its external surface. 40 C.F.R. § 761.3.
16. The PCB regulations define the term "*PCB Container*" to mean any package. . . barrel, drum, tank or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs." 40 C.F.R. § 761.3.

COUNT 1
(Failure to 30-Day Leak Check for Stored PCB Items)

17. On or about the day of the inspection, the Inspector observed Respondent possessed PCB Items in storage.
18. On or about the day of the inspection, the Inspector requested the Respondent to provide for inspection and review any 30-day Stored PCB Item Inspection documents.
19. In response to the request made in Paragraph 18 immediately above, Respondent provided the Inspector a blank copy of a "PCB Storage Facility Inspection" sheet, containing no information.
20. The PCB regulations require all PCB Items stored to be inspected for leaks at least every 30 days, and for records to be kept of such inspections. 40 C.F.R. § 761.65(c)(5).
21. Respondent's above-described conduct, failing to conduct 30-day inspections for leaks of stored PCB Items, as required by 40 C.F.R. § 761.65(c)(5), constitutes a violation of section 15 of TSCA, 15 U.S.C. § 2614.

PROPOSED TSCA PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. Additionally, on February 13, 2004, the EPA Administrator caused to be promulgated, at 69 FR 7121, a Final Rule which implements the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, and authorizes EPA to assess civil penalties of up to \$32,500 for TSCA violations occurring on or after March 15, 2004

In arriving at a penalty, EPA will take into consideration those factors required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), which include: the nature, circumstances, extent, and gravity of the violation, and, with respect to respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require.

EPA's actions with respect to the assessment of civil penalties are guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, which provides a rational and consistent method for applying the TSCA statutory factors to the circumstances of a specific case.

Pursuant to section 15 of TSCA, Respondent may be assessed a penalty of up to \$32,500 per violation of TSCA. EPA herein below provides a brief explanation of the severity of each

violation alleged, as allowed by 40 C.F.R. § 22.14(a)(4)(ii). A recitation of the statutory penalty authority applicable for each violation alleged in the complaint is contained in Attachment 1 hereto:

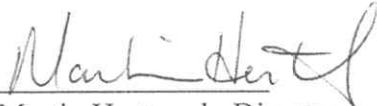
COUNT	PROPOSED PENALTY
Count 1	\$13,000.00
<u>TOTAL PROPOSED PENALTY</u>	<u>\$13,000.00</u>

ATTACHMENTS

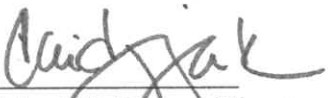
1. Memorandum on Penalty Calculation Justification dated September 27, 2007.
2. Consolidated Rules of Practice, 40 CFR part 22.
3. EPA PCB Penalty Policy dated April 9, 1990.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9/27/07

By: 
Martin Hestmark, Director
Technical Enforcement Program

Date: 9.27.07

By: 
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 9/27/2007

By: 
Dana J. Stotsky
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