



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

RECEIVED

SEP 09 2015

EPA ORC
Office of Regional Hearing Clerk

September 9, 2015

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In the Matter of Connecticut Oil Recycling Services, LLC, Docket No. TSCA-01-2015-0071

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint and Notice of Opportunity for Hearing, with Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Audrey Zucker".

Audrey Zucker
Enforcement Counsel

Enclosures

cc: David J. Favale, Connecticut Oil Recycling Services, LLC

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Notice of Opportunity for Hearing was sent to the following persons, in the manner specified on the date below:

Original and one copy,
hand-delivered:

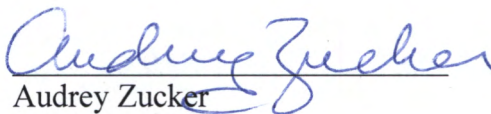
Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

One copy by certified mail, return
receipt requested:

David J. Favale, Member
Connecticut Oil Recycling Services, LLC
27 Mill Street
Middletown, CT

Date:

Sept 9, 2015



Audrey Zucker
Enforcement Counsel
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
(617) 918-1788

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
SEP 09 2015
EPA ORC
Office of Regional Hearing Clerk

_____)
In the Matter of:)
)
Connecticut Oil Recycling Services, LLC)
27 Mill Street)
Middletown, CT 06457) Docket No. TSCA-01-2015-0071
)
Respondent.)
) **COMPLAINT and NOTICE OF**
Proceeding under Section) **OPPORTUNITY FOR HEARING**
16(a) of the Toxic Substances)
Control Act, 15 U.S.C. § 2615(a))
_____)

COMPLAINT

1. Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), issues this administrative Complaint and Notice of Opportunity for Hearing to Connecticut Oil Recycling Services, LLC ("Respondent") under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. This Complaint notifies Respondent that EPA intends to assess penalties for an alleged violation of Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761. The alleged violation involves the failure to properly prepare a hazardous waste manifest for waste containing PCBs. The Notice of Opportunity for Hearing

describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

I. STATUTORY AND REGULATORY BASIS

2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides for the assessment of penalties for violations of Section 15 of TSCA, 15 U.S.C. § 2614. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), in turn, states that it shall be unlawful for any person to fail to comply with any regulation promulgated under Section 6 of TSCA.

3. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), requires EPA to promulgate regulations with respect to the disposal of PCBs.

4. The PCB Regulations at 40 C.F.R. Part 761 were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

5. The PCB Regulations "establish prohibitions of, and requirements for, the manufacturing, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items." 40 C.F.R. § 761.1(a).

II. GENERAL ALLEGATIONS

6. Respondent is a corporation incorporated under the laws of the State of Connecticut.

7. Respondent owns and operates a facility located at 27 Mill Street in Middletown, Connecticut. On information and belief, as part of its operations, Respondent's tanker truck drivers pick up waste oil from various customers, add the waste oil to Respondent's tanker truck where it is combined with waste oil picked up from other customers, and then transport the

tanker truck to a used oil and processing marketing facility, known as Active Oil, for recycling and/or disposal.

8. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

9. On April 10, 2015, Respondent dispatched its tanker truck no. 12 to pick up waste oil from the Regional Refuse Disposal District #1 ("RRDD"), located at 31 New Hartford Road, Barkhamsted, Connecticut. The RRDD, established by several towns in Connecticut, provides a waste disposal transfer station including recycling, for residents and businesses located in these towns. During the waste pickup at the RRDD, Respondent removed a total of 920 gallons of waste oil from one or both of the RRDD's interconnected Above Ground Storage Tanks located on the RRDD site. RRDD's waste oil was not analyzed in accordance with 40 C.F.R. § 761 prior to or at the time of shipment, however, Respondent retained samples of the waste oil for later analysis if necessary.

10. Prior to or after leaving the RRRD site, Respondent's tanker truck no. 12 picked up waste oil from several additional locations and added this oil to the tanker truck where it was combined with waste oils from other customers. On information and belief, none of the waste oil from these additional locations was analyzed prior to or at the time of shipment. However, Respondent retained samples of the waste oil from at least some of these pickup locations for later analysis if necessary.

11. On April 13, 2015, Respondent transported tanker truck no. 12, with a combined total of 4,924 gallons of waste oil, including 920 gallons from the RRDD and 4,024 gallons from other customers, to Active Oil located at 120 Forbes Avenue, New Haven,

Connecticut, for recycling and/or disposal. Respondent provided a Bill of Lading to Active Oil for the shipment (“BOL No. 23550”) of 4,924 gallons of waste oil. Respondent’s shipment was off-loaded into a tank at the Active Oil facility. No PCB analysis of the 4,924 gallons of waste oil was performed prior to or at the time of shipment. However, Active Oil retained samples of the waste oil delivery for later analysis if necessary.

12. On BOL No. 23550, Respondent identified itself as the “generator” and identified the shipment as “used oil.”

13. Upon adding Respondent’s 4,924 gallons of waste oil to a tank at the Active Oil facility, the total volume of waste oil in the Active Oil tank was approximately 15,000 gallons (collectively, the “Waste”).

14. After receiving Respondent’s shipment, Active Oil sampled and analyzed the Waste collected in its tank and discovered that it had a PCB concentration of 14 parts per million (“ppm”). Active Oil traced the source of the contamination back to the retain sample from the delivery of used oil received from Respondent on BOL No. 23550. Analysis of the retain sample revealed a PCB concentration of 29 ppm. Active Oil was not a TSCA-approved facility authorized to store or dispose of PCB-contaminated waste and, on April 15, 2015, Active Oil notified the Connecticut Department of Energy and Environmental Protection (“CTDEEP”) and Respondent of its findings.

15. On April 17, 2015, a CTDEEP inspector, as a representative of EPA, conducted an inspection of Respondent’s facility (the “CTDEEP Inspection”).

16. During the CTDEEP Inspection, Respondent provided analytical results from

the RRDD and three other locations where it had picked up the waste oil that it transported to Active Oil. Three retains were non-detect for PCBs. However, the retain sample collected from RRDD revealed PCBs at a concentration at 233 ppm.

17. By adding PCB contaminated waste oil collected from the RRDD, to oils contained in or added to tanker truck no. 12, and then emptying the contents of tanker truck no. 12 to a tank located at the Active Oil facility, Respondent's actions resulted in the PCB contamination of approximately 15,000 gallons of Waste.

18. Based on information obtained during the CTDEEP Inspection, Complainant has determined that Respondent has violated Section 15 of TSCA and the PCB Regulations as set forth below.

III. VIOLATIONS

COUNT 1 – Failure to Prepare a Hazardous Waste Manifest

19. Complainant realleges and incorporates by reference Paragraphs 1-18.

20. Pursuant to 40 C.F.R. § 761.207(a), a generator of PCB waste who relinquishes control of that waste by transporting it or offering it for transport for off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22. For each bulk load of PCBs, the generator must specify on the manifest, among other things: the identity of the PCB waste; the earliest date of removal from service for disposal; and the weight in kilograms of the PCB waste.

21. In accordance with 40 C.F.R. § 761.20(e)(2)(ii), concerning the testing of used oil

fuel, “. . . if any PCBs at a concentration of 50 ppm or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of 50 ppm or greater for purposes of complying with the [PCB] disposal requirements. . .”

22. At all times relevant to this Complaint, Respondent was a "generator," as defined in 40 C.F.R. § 761.3.

23. At all times relevant to this Complaint, the Waste was "PCB waste," as defined in 40 C.F.R. § 761.3.

24. As described in Paragraph 11 above, Respondent "relinquish[ed] control" over PCB waste by transporting it to Active Oil.

25. As described in Paragraph 11 above, Respondent offered PCB waste to Active Oil for "disposal," as defined in 40 C.F.R. § 761.3.

26. Accordingly, pursuant to 40 C.F.R. § 761.207(a), Respondent was required to properly prepare a hazardous waste manifest for the Waste it transported to Active Oil on April 13, 2015.

27. The Bill of Lading that Respondent used to transport the Waste to Active Oil on April 13, 2015 (*i.e.*, BOL No. 23550) was not a proper hazardous waste manifest because: (a) it did not comply with the required manifest form (*e.g.*, EPA Form 8700-22), (b) did not identify the Waste as PCB waste, (c) did not list the weight of the Waste in kilograms and (d) did not include its storage for disposal date.

28. Accordingly, Respondent's failure to comply with the PCB manifesting

requirements for BOL. No. 23550, as described in Paragraph 27 above, constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA, 15 U.S.C. § 2604.

IV. PROPOSED CIVIL PENALTY

29. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation described above. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule"), 40 C.F.R. Part 19, violations that occur after December 8, 2013 are subject to penalties up to \$37,500 per day per violation. 78 Fed. Reg. 66643, November 6, 2013.

30. EPA has calculated a proposed penalty using the penalty assessment criteria of Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), by taking into consideration the nature, circumstances, extent, and gravity of the violations and, with respect to the Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require.

31. In applying the penalty assessment criteria, EPA has used the approach outlined in EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy" (the "PCB Penalty Policy"), dated April 9, 1990, a copy of which is included with this Complaint. See EPA's "Notice of Availability of Polychlorinated Biphenyls Penalty Policy," 55 Fed. Reg. 13955 (April 13, 1990). A revised penalty matrix, inserted into the PCB Penalty Policy at page 9-C, takes into account inflation adjustments under the DCIA for violations occurring after January 12, 2009. EPA's December 6, 2013 Penalty Inflation Rule further revises penalties for violations occurring after

December 6, 2013. The PCB Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerative above to particular cases.

32. Thus, taking into account the particular facts and circumstances of this case, and in accordance with the requirements of the PCB Penalty Policy and the TSCA penalty factors described above, EPA proposes to assess Respondent a civil penalty of \$37,500 for its violation of Section 15 of TSCA and 40 C.F.R. Part 761, as set forth below:

Count 1: A penalty of \$37,500 is proposed for Respondent's failure to properly prepare a hazardous waste manifest. The violation is classified as a non-disposal violation, involving (1) a "major extent" of PCBs (4,924 gallons), and (2) a "high range level one" assessment for the "circumstances" factor (appropriate for major manifesting errors). The resulting initial gravity-based amount is \$39,300. Because the maximum daily penalty is less than \$39,300, the amount of the penalty is reduced to the maximum daily penalty or \$37,500. No further adjustments are proposed to this base penalty amount.

33. The proposed penalty was developed based upon the best information available to EPA at this time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

34. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated

Rules of Practice, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which is provided with the Complaint.

35. In its Answer, Respondent may also: (1) dispute any material fact in this Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

36. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100, Mail Code: ORA18
Boston, Massachusetts 02109-3912

37. Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Audrey Zucker, the attorney assigned to represent EPA, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Audrey Zucker
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100, Mail Code: OES 04-2
Boston, Massachusetts 02109-3912
Tel: (617) 918-1788
Zucker.audrey@epa.gov

38. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found to be in default, which constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing. An order may then be issued making Respondent liable for the full amount of any penalty proposed in this Complaint.

VI. SETTLEMENT CONFERENCE

39. Whether or not a hearing is requested upon the filing of an answer, Respondent may confer informally with EPA concerning the alleged violations and/or the amount of any penalty. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. Where appropriate, the amount of any penalty may be modified to reflect any settlement agreement reached at such a conference.

40. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Audrey Zucker, at (617) 918-1788 or zucker.audrey@epa.gov.

Susan Studlien

Date: 09/03/2015

Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1