

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

2013 JUN 11 AM 9:31

75 HAWTHORNE STREET

US EPA - REGION IX
HEARING CLERK

SAN FRANCISCO, CALIFORNIA 94104

In the Matter of :

)

)

Docket No. TSCA-09-2013-004

Veolia Environmental Services

)

Technical Solutions LLC,

)

RESPONDENT'S ANSWER TO COMPLAINT,

)

REQUEST FOR

Respondent

)

HEARING AND ALTERNATIVE DISPUTE

)

RESOLUTION

ANSWER TO PRELIMINARY STATEMENT

Complainant in the above-styled matter has misnamed the Respondent, whose name is actually Veolia ES Technical Solutions, L.L.C. (hereinafter "Veolia"). In addition, Veolia notes that it owns and operates a recycling facility located in Phoenix AZ, but has numerous other operating locations across the United States. Veolia admits that the United States Environmental Protection Agency (hereinafter "USEPA") has promulgated regulations regarding the use, manufacture, processing, distribution and disposal of polychlorinated biphenyls (hereinafter "PCBs"). The remainder of the Complainant's Preliminary Statement contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

ANSWER TO GENERAL ALLEGATIONS

Paragraphs 1 through 5: These paragraphs contain legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 6: Veolia denies it is a corporation. Veolia is a limited liability company. The remainder of this paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraphs 7 and 8: Veolia admits Paragraphs 7 and 8.

Paragraph 9: Veolia admits that EPA Region IX inspectors were present at the Veolia Phoenix recycling facility (hereinafter "Facility") on March 17, 2008 and September 16, 2010.

ANSWER TO ALLEGED VIOLATIONS

Count I – Continued Use of PCB-Contaminated Structure (40 C.F.R. 761.30(u)(1))

Paragraph 10: Veolia incorporates by reference its answers to Paragraphs 1 through 9, above.

Paragraphs 11 through 15: These paragraphs contain legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 16: Veolia admits Paragraph 16 and adds that the EPA Region IX inspector and the Veolia representative in Building 3 took a total of six wipe samples, three by the EPA inspector and three taken by the Veolia representative immediately next to those taken by the EPA inspector. Each of these six wipe samples was taken using a square template that was 10 centimeters on each side, for a total area of 100 square centimeters.

Paragraph 17: Veolia admits it received from its analytical laboratory results from the three wipe samples taken by Veolia showing a PCB level of (a) 9 micrograms per 100 square centimeters, (b) 11 micrograms per 100 square centimeters and (c) 15 micrograms per 100 square centimeters. Veolia has no data showing the precise amount of the PCBs contained in the areas covered by the wipe samples, but the results obtained from the laboratory testing of these wipe samples demonstrate that the total amount of the PCBs in these areas was extremely small, orders of magnitude under 220 gallons or 1200 kilograms.

Veolia adds that it never received results from the EPA Region IX's March 17, 2008 wipe samples until it received a request for additional information from EPA Region IX on October 5, 2010.

Paragraph 18: Veolia admits it cleaned approximately 2600 square feet of the floors, including the areas contained in the EPA and Veolia wipe samples, in Building 3 on April 4, 2008. The cleaned areas were approximately 4000 times the total area of the six wipe samples, or approximately 12000 times the area of the only two wipe samples known to Veolia at the time of the cleaning to be above 10 micrograms per 100 square centimeters.

Paragraph 19: Veolia denies that Building 3 was "PCB-contaminated" during the time period of March 25, 2008 through April 4, 2008. Building 3 is a large building, with approximately 5,860 square feet. The two wipe samples referenced in this Count I covered an area of 200 square centimeters, an area representing approximately 0.0037% of the total area of the building.

Paragraph 20: Veolia admits that it used Building 3 during the period of March 25, 2008 to April 3, 2008 before performing the cleaning activities described in the Answer to Paragraph 18. Veolia denies it used Building 3 on April 4, 2013, as it was engaged in these cleaning activities on that date.

Paragraph 21: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count II – Continued Use of PCB-Contaminated Structure (40 CFR 761.30(u)(1))

Paragraph 22: Veolia incorporates by reference its answers to Paragraphs 1 through 21, above.

Paragraph 23: Veolia admits Paragraph 23 and adds that the EPA Region IX inspector and the Veolia representative in Building 4 took six wipe samples, three by the EPA inspector and three taken by the

Veolia representative immediately next to those taken by the EPA inspector. Each of these six wipe samples were each taken using the same procedure outlined in the Answer to Paragraph 16 above.

Paragraph 24: Veolia admits it received from its analytical laboratory results from the three wipe samples taken by Veolia showing a PCB level of (a) 6 micrograms per 100 square centimeters, (b) 6 micrograms per 100 square centimeters and (c) 19 micrograms per 100 square centimeters. Veolia has no data showing the precise amount of the PCBs contained in the areas covered by the wipe samples, but the results obtained from the laboratory testing of these wipe samples demonstrate that the total amount of the PCBs in these areas was extremely small, orders of magnitude under 220 gallons or 1200 kilograms.

Veolia adds that it never received results from the EPA Region IX's March 17, 2008 wipe samples until it received a request for additional information from EPA Region IX on October 5, 2010.

Paragraph 25: Veolia admits it cleaned approximately 1500 square feet of the floors, including the areas included in the EPA and Veolia wipe samples, in Building 4. The cleaned areas were approximately 2300 times the total area of the six wipe samples, or approximately 13900 times the area of the single wipe sample that was known to Veolia at the time of the cleaning to be above 10 micrograms per 100 square centimeters.

Paragraph 26: Veolia denies that Building 4 was "PCB-contaminated" during the time period of March 25, 2008 through April 4, 2009. Building 4 is also a large building, with approximately 6,530 square feet. The only known wipe sample over 10 micrograms per 100 square centimeters covered an area of 100 square centimeters, an area representing approximately 0.0016% of the total area of the building.

Paragraph 27: Veolia admits that it used Building 4 during the period of March 25, 2008 to April 3, 2008 before performing the cleaning activities described in the Answer to Paragraph 25. Veolia denies it used Building 3 on April 4, 2013, as it was engaged in these cleaning activities on that date.

Paragraph 28: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count III – Improper disposal of PCBs (40 CFR 761.50(a)(4))

Paragraph 29: Veolia incorporates by reference its answers to Paragraphs 1 through 28, above.

Paragraphs 30 through 32: These paragraphs contain legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 33: Veolia admits Paragraph 33 and adds that the EPA Region IX inspector took two wipe samples on the concrete surface adjacent to building 2. On September 21, 2010, Veolia took two wipe samples in areas next to the point where the wipe samples were taken by the EPA inspector. Each of the four wipe samples were taken using the same procedure outlined in the Answer to Paragraph 16 above. Veolia adds that, on September 27, 2010, Veolia received from its analytical laboratory results from the two wipe samples taken by Veolia showing a PCB level of (a) 8.5 micrograms per 100 square centimeters and (b) 2.9 micrograms per 100 square centimeters, both results below the threshold of 10 micrograms per 100 square centimeters in 40 CFR 761.1(b)(3). Veolia has no data showing the precise amount of the PCBs contained in the areas covered by the wipe samples, but the results obtained from the laboratory testing of these wipe samples demonstrate that the total amount of the PCBs in these areas was extremely small, orders of magnitude under 5 gallons or 25 kilograms.

Paragraph 34: Veolia admits Paragraph 34, but questions the accuracy of the EPA sampling result, since it is significantly higher than the results from Veolia's own sampling. Veolia therefore denies that the area of the EPA wipe sample next to Building 2 demonstrates that PCBs were in fact present at over the 40 CFR 761.1(b)(3) regulatory threshold.

Paragraph 35: Veolia admits it cleaned approximately 3170 square feet of the concrete area next to Building 2, including the areas included in the EPA and Veolia wipe samples. The cleaned areas were approximately 7400 times the total area of the four wipe samples, or approximately 29000 times the area of the one EPA wipe sample reported to be above 10 micrograms per 100 square centimeters.

Paragraph 36 through 38: These paragraphs contain legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count IV – Failure to Indicate the Removal From Service Date (40 CFR 761.65(c)(8))

Paragraph 39: Veolia incorporates by reference its answers to Paragraphs 1 through 38, above.

Paragraph 40: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 41: Veolia admits Paragraph 41.

Paragraph 42: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 43: Veolia admits Paragraph 43.

Paragraph 44: Veolia admits there were no markings directly on these two roll-off boxes with the date of removal from service of the PCB ballasts placed in the roll-off boxes. However, these two roll-off boxes each did have a PCB Mark. In addition, at the time of the 2008 inspection, Veolia had a tracking system at the Phoenix facility, readily available to the EPA inspector, showing the removal from service date for all PCB ballasts contained in these two roll-off boxes. 40 CFR 761.65(c)(8) states that the storage of PCB items (which, with regard to this Count, includes both the PCB ballasts and the roll-off boxes which held them) "shall be managed so that the PCB items can be located by this date [of removal from service]." Even in the absence of a marking on the roll-off boxes with the removal from service date, the Veolia tracking system fully met this requirement.

Paragraph 45: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count V – Failure to Indicate the Removal From Service Date (40 CFR 761.65(c)(8))

Paragraph 46: Veolia incorporates by reference its answers to Paragraphs 1 through 45, above.

Paragraph 47: Veolia admits Paragraph 47.

Paragraph 48: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 49: Veolia admits Paragraph 49.

Paragraph 50: Veolia admits there were no markings directly on these two roll-off boxes with the date of removal from service of the PCB ballasts placed in the roll-off boxes. However, these two roll-off boxes each did have a PCB Mark. In addition, at the time of the 2010 inspection, Veolia had a tracking system at the Phoenix facility, readily available to the EPA inspector, showing the removal from service date for all PCB ballasts contained in these two roll-off boxes. 40 CFR 761.65(c)(8) states that the storage of PCB Items (which, with regard to this Count, includes both the PCB ballasts and the roll-off boxes which held them) "shall be managed so that the PCB Items can be located by this date [of removal from service]." Even in the absence of a marking on the roll-off boxes with the removal from service date, the Veolia tracking system fully met this requirement.

Paragraph 51: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count VI – Failure to Mark PCB Containers (40 CFR 761.40(a)(1))

Paragraph 52: Veolia incorporates by reference its answers to Paragraphs 1 through 51, above.

Paragraph 53: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 54: Veolia admits it had a bucket and two decontamination bath tanks, with each bath holding approximately 650 gallons of liquid decontamination fluid, in Building 2. Veolia denies that the bucket or either of the decontamination tanks contained PCBs over 50 ppm. These containers are located inside a building at the Facility, which at the time of the 2010 inspection had controlled access and a variety of means (e.g., locked gates and doors, alarms triggered by an unauthorized entry using a door or gate, barbed wire around most of the perimeter of the Facility) to prevent uncontrolled access. In addition, at the time of the inspection, the building itself had numerous PCB Marks, both inside and outside, that warned any person in the building that PCBs were present.

Paragraph 55: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 56: Veolia admits Paragraph 56.

Paragraph 57: These paragraphs contain legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Count VII – Failure to Mark PCB Containers (40 CFR 761.40(a)(1))

Paragraph 58: Veolia incorporates by reference its answers to Paragraphs 1 through 57, above.

Paragraph 59: Veolia admits it had a vacuum cleaner in Building 2, used from time to time to vacuum up dry materials. Veolia has no analytical data that supports the conclusion that the vacuum cleaner contained any PCBs at any level of concentration at any time.

Paragraph 60: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

Paragraph 61: Veolia admits Paragraph 61.

Paragraph 62: This paragraph contains legal conclusions to which no response is required. To the extent that a response is required, Veolia denies those allegations.

PROPOSED CIVIL PENALTY

This part of the Complaint contains no factual provisions to which any answer is required; in addition, Complainant has not specified the civil penalties it seeks for each of the seven counts in the Complaint, so it is not possible at this stage of the proceedings for Veolia to respond as to what would be an appropriate penalty for any of those counts, should any of them be found valid by the Presiding Officer. Veolia will therefore provide facts demonstrating what would be appropriate civil penalties for each count found to be valid by the Presiding Officer during the pre-hearing exchange, as prescribed in 40 CFR 22.19(a)(4).

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Administrative Hearing:

Veolia requests a hearing in this matter. Since the facility that is the subject of this case is located in Phoenix AZ and many (but not all) of the witnesses Veolia will call are employed at the Facility, Veolia asks that the hearing in this case be conducted in Maricopa County AZ. 40 CFR 22.21(d) states that the location for the hearing should be determined under the terms of 40 CFR 22.19(d). That latter section states that the location should be "the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC..." Selecting Maricopa County AZ is consistent with this regulatory direction and fairly distributes the burdens of travel on both parties, since some Veolia witnesses and Veolia's counsel must travel to Arizona for the hearing, as will EPA Region IX's counsel and witness(es). Conducting the hearing in San Francisco (the location of EPA Region IX's offices) would be less fair, as it would burden only Veolia, while having the hearing in Washington DC seems to unduly burden both parties.

Informal Settlement Conference:

Veolia and the Complainant have engaged in informal settlement negotiations that have not resolved this matter. Veolia is prepared to continue settlement negotiations with the Complainant.

Alternative Dispute Resolution:

Veolia believes that Alternative Dispute Resolution may enable the parties to resolve this matter without the need for a hearing and therefore requests, under 40 CFR 22.18(d). Simultaneously with its Answer, Veolia has filed a Motion to Appoint a Neutral to Conduct Alternative Dispute Resolution.

Consent Agreement and Final Order

This part of the Complaint contains no factual provisions to which any answer is required.

Dated 3 June 2013

Greig R. Siedor

Greig R. Siedor, Attorney for Veolia ES Technical Solutions, L.L.C.

P.O. Box 1238

Sheffield MA 01257

413-229-2924