

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_) )  
In the Matter of: ) )  
ENPRO Services, Inc. ) )  
114 Bridge Road ) )  
Salisbury, MA 01952 ) )  
ENPRO Services of Vermont, Inc. ) )  
54 Avenue D ) )  
Williston, Vermont 05495 ) )  
Respondent. ) )  
\_\_\_\_\_)

Docket No. TSCA-01-2015-0053

**ADMINISTRATIVE COMPLAINT  
AND  
NOTICE OF  
OPPORTUNITY FOR HEARING**

**I. Statutory and Regulatory Basis**

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing to ENPRO Services, Inc. (“ Respondent ENPRO”) and ENPRO Services of Vermont, Inc. (“Respondent EVI”) (both hereinafter referred to as “Respondents”) under Section 16 of the Toxic Substances Control Act (“TSCA”) 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.

2. This Complaint notifies Respondents that EPA intends to assess penalties for alleged violations 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 violations involve

omissions and inaccuracies in waste manifests for waste containing PCBs and the exportation of PCBs.

3. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

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. Pursuant to 40 C.F.R. § 761.1(a), the PCB Regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.”

6. Pursuant to 40 C.F.R. § 761.3, the PCB Regulations define “PCB” as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”

7. Pursuant to 40 C.F.R. § 761.3, the PCB Regulations define “disposal” as “intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs or PCB Items.”

8. Subpart K of 40 C.F.R. Part 761 sets forth the requirements for PCB waste disposal records and reports, including the requirements for storers and generators of PCB waste to have an EPA identification number, to notify EPA of PCB waste activity, and to properly prepare a PCB waste manifest. See 40 C.F.R. §§ 761.202, 205, and 207.

9. Pursuant to 40 C.F.R. § 761.20(c), “No persons may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption,” except for in limited circumstances.

10. Pursuant to 40 C.F.R. § 761.97, no person may export PCBs or PCB Items for disposal without an exemption, and PCBs and PCB Items of unknown concentrations shall be treated as if they contain PCB concentrations greater than 50 ppm.

## II. General Allegations

11. Respondent ENPRO is an environmental contractor and is a corporation formed under the laws of the Commonwealth of Massachusetts.

12. Respondent EVI is an environmental contractor and is a corporation formed under the laws of the State of Maine.

13. At all times relevant to this Complaint, Respondents are and have been “persons,” as defined by 40 C.F.R. § 761.3.

14. In or about June 2014, the former Bolton-Emerson Americans Incorporated (“Bolton-Emerson”) hired Respondent ENPRO as an environmental contractor to characterize and dispose of waste remaining at the Bolton-Emerson facility located at 9 Osgood Street, Lawrence, MA 01843 (“the Bolton-Emerson Facility”) after the sale of the Bolton-Emerson business and assets.

15. In or about July 2014, Respondent ENPRO performed environmental contractor work at the Bolton-Emerson Facility.

16. Respondent ENPRO identified approximately twelve drums of waste at the Bolton-Emerson Facility located in a shed, including drums 109974 and 109976.

17. Respondent ENPRO failed to sample these twelve drums for PCBs.

18. On or about July 28, 2014, Respondent ENPRO shipped the waste from the Bolton-Emerson Facility, including the twelve drums, on manifest # 002487040 GBF to Respondent EVI's facility located at 54 Avenue D, Williston, VT 05495 ("the EVI Facility").

19. On line item 27(5) on manifest # 002487040 GBF, Respondent ENPRO identified the twelve drums as containing flammable liquids (methyl ethyl ketone).

20. On manifest # 002487040 GBF, Respondent ENPRO did not identify any PCBs in the shipment.

21. An employee of Respondent ENPRO signed manifest # 002487040 GBF as an agent for Bolton-Emerson, certifying the accuracy of manifest # 002487040 GBF.

22. On or about July 29, 2014, Respondent EVI received the shipment on manifest # 002487040 GBF at the EVI Facility.

23. Upon receiving the shipment on manifest # 002487040 GBF from Respondent ENPRO, Respondent EVI performed a quality assurance/quality control process but did not sample the contents of the drums for PCBs.

24. On or about August 12, 2014, the material from prior manifest # 002487040 GBF, including drums 109974 and 109976, was released for shipment by Respondent EVI on the new manifest # 002485987 GBF from Vermont in the United States to Newalta Corporation's

("Newalta") facility located at 125 Rue Belanger, Chateauguay, Quebec, J6J 4Z2, Canada

("Newalta's Chateauguay Facility").

25. On manifest # 002485987 GBF, Respondent EVI did not identify any PCBs in the shipment.

26. Upon receiving the shipment on manifest # 002485987 GBF from Respondent EVI, Newalta did not test the shipment for PCBs.

27. According to EVI, Newalta separated the waste load on manifest # 002485987 GBF into lower-halogen material and higher-halogen material.

28. Newalta operates a fuel blending facility located in Barrie, Ontario ("Newalta's Barrie Facility").

29. As admitted by EVI, "Newalta- Chateauguay pumped out their supply of high halogenated fuel drums which included the two drums from EVI's shipment from August 12, 2014. This load was offloaded into four storage tanks at the Newalta-Barrie facility."

30. Newalta's Barrie Facility did not test the waste load for PCBs.

31. When the waste load from manifest # 002485987 GBF was offloaded into the four storage tanks at Newalta's Barrie Facility, it came into contact with approximately 47,600 gallons of other material.

32. Newalta's Barrie Facility transported a load of potential fuel from these storage tanks to a cement kiln facility, located in Ontario, which tested the load and discovered elevated PCB concentrations.

33. Newalta traced the PCBs back to the shipment on manifest # 002485987 GBF from Respondent EVI.

34. Samples taken from the residues from the two original drums (numbers 109974 and 109976) transported by Respondent ENPRO from the Bolton-Emerson Facility and manifested by Respondent EVI to Newalta's Chateaugay Facility showed PCB concentrations of 490,000 ppm and 510,000 ppm.

35. Elevated concentrations of PCBs from drums 109974 and 109976 contaminated the contents of four storage tanks at Newalta's Barrie Facility, resulting in the contamination of approximately 47,600 gallons of potential fuel with PCBs.

36. Pursuant to the manifest discrepancy reporting requirements of 40 C.F.R. § 761.210, on November 6, 2014 and in subsequent correspondence, Respondent EVI notified EPA regarding Respondent EVI's shipment of regulated levels of PCBs to Newalta's Chateaugay Facility on manifest # 002485987 GBF.

37. Based on the foregoing information, Complainant has determined that Respondent ENPRO and Respondent EVI violated Section 15 of TSCA and the PCB Regulations as set forth below.

### III. Violations

#### COUNT I: Improper Manifesting

38. Complainant re-alleges paragraphs 1 through 37.

39. Pursuant to 40 C.F.R. § 761.207(a), a generator who transports, or offers for transport, PCB waste for commercial off-site storage or off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22.

40. The contents of the waste transported by Respondent ENPRO on manifest # 002487040 GBF from the Bolton-Emerson Facility to the EVI Facility meets the definition of “PCB waste,” as defined in 40 C.F.R. § 761.3.

41. At all times relevant to this Complaint, Respondent ENPRO is a “generator,” as defined in 40 C.F.R. § 761.3.

42. As described above, Respondent ENPRO transported or offered for transport PCB waste for “disposal,” as defined in 40 C.F.R. § 761.3.

43. Accordingly, pursuant to 40 C.F.R. § 761.207(a)(1), Respondent ENPRO was required to prepare a proper hazardous waste manifest for the PCB waste it transported from the Bolton-Emerson Facility to Respondent EVI’s Facility, including, 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.

44. Respondent ENPRO failed to indicate on manifest # 002487040 GBF: (a) that the drums contained PCBs; (b) the earliest date of removal of the PCB-contaminated waste from service for disposal; and (c) the weight in kilograms of the PCB-contaminated waste.

45. Accordingly, Respondent ENPRO's failure to comply with the PCB waste manifesting requirements for manifest # 002487040 GBF constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA.

### **Count II: Improper Manifesting**

46. Complainant re-alleges paragraphs 1 through 45.

47. Pursuant to 40 C.F.R. § 761.207(a), a generator who transports, or offers for transport, PCB waste for commercial off-site storage or off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22.

48. The contents of the waste manifested by Respondent EVI on manifest # 002485987 GBF from the EVI Facility to Newalta's Chateauguay Facility meets the definition of "PCB waste," as defined in 40 C.F.R. § 761.3.

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

50. As described above, Respondent EVI offered for transport PCB waste for "disposal," as defined in 40 C.F.R. § 761.3.

51. Accordingly, pursuant to 40 C.F.R. § 761.207(a)(1), Respondent EVI was required to prepare a proper hazardous waste manifest for the PCB waste it shipped from the EVI Facility to Newalta's Chateauguay Facility, including, 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.



52. Respondent EVI failed to indicate on manifest # 002485987 GBF: (a) that the drums contained PCBs; (b) the earliest date of removal of the PCB-contaminated waste from service for disposal; and (c) the weight in kilograms of the PCB-contaminated waste.

53. Accordingly, Respondent EVI's failure to comply with the PCB waste manifesting requirements for manifest # 002485987 GBF constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA.

### **Count III: Export of PCBs**

54. Pursuant to 40 C.F.R. § 761.20(c), "No persons may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption," except for in limited circumstances.

55. Pursuant to 40 C.F.R. § 761.97, no person may export PCBs or PCB Items for disposal without an exemption, and PCBs and PCB Items of unknown concentrations shall be treated as if they contain greater than 50 ppm.

56. As described above, the contents of the waste shipped by Respondent EVI on manifest # 002485987 GBF from the EVI Facility to Newalta's Chateauguay Facility meets the definition of "PCB waste," as defined in 40 C.F.R. § 761.3.

57. As described above, Respondent EVI distributed PCBs in commerce by shipping PCBs on manifest # 002485987 GBF to Newalta Corporation.

58. As described above, Respondent EVI exported PCB waste with concentrations greater than 50 ppm on manifest # 002485987 GBF for disposal without an exemption from the EVI Facility in Vermont, United States of America to Newalta's Chateauguay Facility in Canada.

59. Accordingly, Respondent EVI's export of PCBs and distribution of the PCBs in commerce by shipping PCBs on manifest # 002485987 GBF to Newalta's Chateaugay Facility violated Section 15 of TSCA and 40 C.F.R. §§ 761.20(c) and 761.97.

#### IV. Proposed Civil Penalty

60. 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 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 and on and before January 12, 2009 are subject to penalties up to \$32,500 per day of violation. Violations that occurred after January 12, 2009 are subject to penalties up to \$37,500 per day per violation. EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule") and EPA's December 6, 2013 update to the Penalty Inflation Rule at 40 C.F.R. Part 19 also apply.

61. The proposed civil penalty has been determined in accordance with Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). For the purposes of determining the amount of any penalty to be assessed, the Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondents, their ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, their degree of culpability, and such other matters as justice may require. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific references to 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 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 enumerated above to particular cases.

62. The PCB Penalty Policy states that a gravity-based penalty should be determined by considering the “extent” level and the “circumstance” level of a violation. The extent level of a violation takes into account that the quantity and concentration of PCBs involved in a violation affects the degree and likelihood of harm from the conduct or activity violating the PCB rules. The circumstance level of a violation reflects the probability of causing harm to human health or the environment.

63. Count I: Improper Manifesting. For non-disposal violations, the extent level of a penalty is calculated based on the cost of proper disposal of PCBs. These calculations are based on the weight in kilograms or gallons of PCBs. For amounts of PCBs less than 220 gallons, a non-disposal violation is considered to be of “Minor Extent.” For Count I, the applicable extent level is “Level C” for “Minor Extent” because a total waste load of approximately 110 gallons (two 55-gallon drums) of PCB liquid waste was shipped on manifest # 002487040. For Count I, the applicable circumstances level is “High—Level 1” for “Major Manifesting” because manifest # 002487040 included major manifesting errors such as failure to identify the shipment as

containing PCB-contaminated waste. The failure to properly identify PCBs in waste shipments presents a great risk of harm to human health and the environment. The shipment of PCB-contaminated waste to a facility that is not authorized to dispose of PCBs may result in the release of PCBs into the environment and/or the exposure of humans to PCBs. Once in the environment, PCBs do not readily break down and therefore may remain for long periods of time cycling between air, water, and soil. PCBs are a probable human carcinogen and have been demonstrated to cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system. Pursuant to the PCB Penalty Policy and the Penalty Inflation Rule for violations occurring after December 6, 2013, the penalty for Count I is \$7,400.

64. Count II: Improper Manifesting. For non-disposal violations, the extent level of a penalty is calculated based on the cost of proper disposal of PCBs. These calculations are based on the weight in kilograms or gallons of PCBs. For amounts of PCBs less than 220 gallons, a non-disposal violation is considered to be of “Minor Extent.” For Count II, the applicable extent level is “Level C” for “Minor Extent” because a total waste load of approximately 110 gallons (two 55-gallon drums) of PCB liquid waste was shipped on manifest # 002485987 GBF. For Count II, the applicable circumstances level is “High—Level 1” for “Major Manifesting” because manifest # 002485987 GBF included major manifesting errors such as failure to identify the shipment as containing PCB-contaminated waste. The failure to properly identify PCBs in waste shipments presents a great risk of harm to human health and the environment. The shipment of PCB-contaminated waste to a facility that is not authorized to dispose of PCBs may result in the release of PCBs into the environment and/or the exposure of humans to PCBs. In this case, the

shipment of unidentified PCBs did in fact result in the contamination of approximately 47,600 gallons of material with elevated levels of PCBs. Once in the environment, PCBs do not readily break down and therefore may remain for long periods of time cycling between air, water, and soil. PCBs are a probable human carcinogen and have been demonstrated to cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system. Pursuant to the PCB Penalty Policy and the Penalty Inflation Rule for violations occurring after December 6, 2013, the penalty for Count II is \$7,400.

65. Count III: Export of PCBs. For export for disposal violations, the extent level of a penalty is calculated based on the cost of cleanup and proper disposal of PCBs. These calculations are based on the weight in kilograms or gallons of PCBs. For amounts of PCBs more than 25 gallons, a disposal violation is considered to be of “Major Extent.” For Count III, the applicable extent level is “Level A” for “Major Extent” because a total waste load of approximately 110 gallons (two 55-gallon drums) of PCB liquid waste was exported and distributed into commerce on manifest # 002485987 GBF. For Count III, the applicable circumstances level is “High—Level 1” for “Major Disposal” because regulated concentrations of PCBs were exported from the United States of America to Canada and distributed into commerce on manifest # 002485987. The shipment of PCB-contaminated waste to a facility that is not authorized to dispose of PCBs may result in the release of PCBs into the environment and/or the exposure of humans to PCBs. In this case, the shipment of unidentified PCBs did in fact result in the contamination of approximately 47,600 gallons of material with elevated levels of PCBs. Once in the environment, PCBs do not readily break down and therefore may remain for long

periods of time cycling between air, water, and soil. PCBs are a probable human carcinogen and have been demonstrated to cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system. Pursuant to the PCB Penalty Policy and the Penalty Inflation Rule for violations occurring after December 6, 2013, the penalty for Count III is \$39,300.

66. After considering other factors which may be used to adjust the penalty amount, Complainant proposes no further adjustments to the gravity-based penalty amount. The proposed penalty as stated in this Complaint was developed based upon the best information available to Complainant at this time and may be adjusted if Respondents establish *bona fide* issues of ability to pay by providing Complainant with adequate financial documentation or if Respondents establish other defenses relevant to the appropriate amount of the proposed penalty.

67. Based upon the violations cited in this Complaint, and taking into account the nature, extent, and circumstances of these violations, the Complainant proposes that Respondents be assessed a total civil penalty in the amount of fifty-four thousand one hundred dollars (\$54,100) for the violations alleged in this Complaint.

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

As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondents have the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and**

**having the above-cited penalty assessed without further proceedings, Respondents must file a written Answer within thirty (30) days of Respondents' receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondents have any knowledge. If Respondents have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondents' Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondents deny any material fact or raises any affirmative defense, Respondents will be considered to have requested a hearing. The Answer must be sent to:

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

Respondents should also send a copy of the Answer and all other documents which Respondents file in this action to Maximilian Boal, the attorney assigned to represent EPA in this matter, at:

Maximilian Boal  
Enforcement Counsel  
U.S. Environmental Protection Agency—Region I  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, Massachusetts 02109-3912


**VI. Informal Settlement Conference**

Whether or not Respondents requests a hearing, Respondents may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondents are encouraged to contact Maximilian Boal, Enforcement Counsel, at (617) 918-1750, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

**Please note that a request for an informal settlement conference does not extend the thirty-day period within which a written Answer must be submitted to avoid default.**

Maximilian Boal, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

7/1/15  
Date

  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of: )

ENPRO Services, Inc. )  
114 Bridge Road )  
Salisbury, MA 01952 )

ENPRO Services of Vermont, Inc. )  
54 Avenue D )  
Williston, Vermont 05495 )  
Respondents. )

Docket No. TSCA-01-2015-0053

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy  
(Hand-Delivered):


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

Copy, including 40 C.F.R.  
Part 22 and PCB Penalty Policy  
(Certified Mail, Return Receipt  
Requested):

Bruce Irving, President  
ENPRO Services, Inc.  
114 Bridge Road  
Salisbury, MA 01952

David Cowie, President  
ENPRO Services of Vermont, Inc.  
54 Avenue D  
Williston, Vermont 05495

Dated: 7-1-2015

  
\_\_\_\_\_  
Maximilian Boal  
Enforcement Counsel  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, Massachusetts 02109-3912