



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

August 3, 2012

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

BY HAND

RECEIVED
AUG 03 2012
EPA ORC WS
Office of Regional Hearing Clerk

Re: *In the Matter of 290 Pratt Street, LLC*
Docket No. TSCA-01-2012-0049

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing and a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Mark Javello, Manager, 290 Pratt Street, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:)

290 Pratt Street, LLC)

Respondent.)

Docket No. TSCA-01-2012-0049

**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 290 Pratt Street, LLC (“Respondent”) 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 Respondent 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 the improper disposal of PCBs from a PCB Transformer and from PCB-Contaminated Transformers.

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. The requirements for the disposal of PCBs are set forth in 40 C.F.R. §§ 761.50 and 761.60.

II. General Allegations

8. Respondent is a limited liability company formed under the laws of the State of Connecticut.

9. Respondent owns and operates the Meriden Enterprise Center facility located at 290 Pratt Street, Meriden, CT 06450 (the “Facility”).

10. Respondent acquired the Facility sometime in or about December 2003.

11. At all times relevant to this Complaint, Respondent is and has been a “person,” as defined by 40 C.F.R. § 761.3.

12. In or about 2004, Respondent hired an environmental consulting firm, Tighe and Bond (“T&B”).

13. On June 18, 2010, T&B discovered a leaking transformer located outdoors on a concrete pad (“the Outdoors Transformer”) at the Facility.

14. On or about June 18, 2010, T&B collected a sample from the concrete pad on which the Outdoors Transformer was located.

15. The June 18, 2010 sample taken by T&B from the concrete pad on which the Outdoors Transformer was located contained PCBs at a concentration of 23,000 parts per million (“ppm”).

16. At some point on or between June 18, 2010 and June 22, 2010, T&B notified the Connecticut Department of Environmental Protection (“CTDEP”) of a PCB release from the Outdoors Transformer.

17. On June 23, 2010, CTDEP conducted an inspection of the Facility to review Respondent’s compliance with Section 6(e) of TSCA and 40 C.F.R. Part 761.

18. CTDEP was provided with a PCB analysis report about the Facility, which was written by General Electric on February 11, 1986 (“1986 Report”).

19. The 1986 Report indicated that the Outdoors Transformer contained oil with a PCB concentration of 135,600 ppm, making the Outdoors Transformer a “PCB Transformer” as defined by 40 C.F.R. § 761.3.

20. During the June 23, 2010 inspection, CTDEP inspected the Outdoors Transformer.

21. At the time of the June 23, 2010 inspection, CTDEP observed seven transformers located in an electrical vault room in the basement of the Facility (“the seven Indoor Transformers” or “the Indoor Transformers”).

22. The seven Indoor Transformers were located on a concrete floor.

23. The seven Indoor Transformers had serial numbers: #4486612; #4486613; #4486614; #4486615; #1709120; #1709121; and #1709122.

24. The 1986 Report indicated that all seven Indoor Transformers located in the electrical vault room contained oil with PCB concentrations between 50 ppm and 500 ppm, making

all seven Indoor Transformers “PCB-Contaminated Electrical Equipment,” as defined by 40 C.F.R. § 761.3.

25. The 1986 Report indicated that two of the Indoor Transformers were leaking as of 1986, specifically Transformer #4486613 and Transformer #4486615.

26. During the June 23, 2010 inspection, CTDEP observed visible staining on the concrete floor beneath the Indoor Transformers.

27. From December 14-16, 2010, CTDEP observed the removal of the Outdoors Transformer and the seven Indoor Transformers from the Facility by Clean Harbors.

28. At some point between December 14-16, 2010, after the Outdoors Transformer was removed, CTDEP observed staining on the concrete pad where the Outdoors Transformer had been mounted.

29. The leaked and/or spilled transformer oil from the Outdoor Transformer, Transformer #4486613, and Transformer #4486615 is “PCB waste,” as defined by 40 C.F.R. § 761.3.

30. Based on information provided by Respondent, Respondent’s consultant T&B, the CTDEP Inspections, the 1986 Report, and subsequent follow-up, Complainant has determined that Respondent has violated Section 15 of TSCA and the PCB Regulations as set forth below.

III. Violations

COUNT I: Improper Disposal from Outdoors Transformer

31. Complainant re-alleges paragraphs 1 through 30.

32. Pursuant to 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of greater than or equal to 50 ppm constitute the disposal of PCBs.

33. Pursuant to 40 C.F.R. § 761.50(a), any person storing or disposing of PCB waste must do so in accordance with 40 C.F.R. §§ 761.50 through 761.79.

34. Pursuant to 40 C.F.R. § 761.60(a), PCB liquids in concentrations equal to or greater than 50 ppm must be disposed of in an incinerator which complies with 40 C.F.R. § 761.70, except that PCB liquids at concentrations equal to or greater than 50 ppm and less than 500 ppm may be disposed of using other specified methods.

35. Oil containing PCBs at a concentration greater than or equal to 50 ppm leaked and/or spilled from the Outdoors Transformer.

36. Respondent effected the “disposal” of PCBs, as defined by 40 C.F.R. § 761.50(a)(4), by either spilling or allowing an uncontrolled discharge of the transformer oil from the Outdoors Transformer at a PCB concentration equal to or greater than 50 ppm.

37. At all times relevant to this Complaint, Respondent did not properly dispose of the leaked and/or spilled PCB transformer oil from the Outdoors Transformer, in accordance with the requirements of 40 C.F.R. § 761.60(a).

38. Accordingly, Respondent’s failure to properly dispose of the leaked and/or spilled transformer oil containing PCBs at a concentration equal to or greater than 50 ppm from the Outdoors Transformer violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

COUNT II: Improper Disposal from Transformer #4486613 and Transformer #4486615

39. Complainant re-alleges paragraphs 1 through 38.

40. Oil containing PCBs at a concentration greater than or equal to 50 ppm leaked and/or spilled from Transformer #4486613 and Transformer #4486615.

41. Respondent effected the “disposal” of PCBs, as defined by 40 C.F.R. § 761.50(a)(4), by either spilling or allowing an uncontrolled discharge of the transformer oil from Transformer #4486613 and Transformer #4486615, at a PCB concentration equal to or greater than 50 ppm.

42. At all times relevant to this Complaint, Respondent did not properly dispose of the leaked and/or spilled PCB transformer oil from Transformer #4486613 and Transformer #4486615, in accordance with the requirements of 40 C.F.R. § 761.60(a).

43. Accordingly, Respondent’s failure to properly dispose of the leaked and/or spilled transformer oil containing PCBs at a concentration equal to or greater than 50 ppm from Transformer #4486613 and Transformer #4486615 violated Section 15 of TSCA and 40 C.F.R. §§ 761.50(a) and 761.60(a).

IV. Proposed Civil Penalty

44. 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.

45. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to 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. To assess a penalty for the

alleged violations in this Complaint, Complainant will take 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. The PCB Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

46. Pursuant to 40 C.F.R. § 22.19, within 15 days after Respondent files its prehearing information exchange, Complainant will specify the proposed penalty and explain how the proposed penalty was calculated. Any proposed penalty in this matter will be developed based upon the best information available to Complainant, but any such penalty may also be adjusted if Respondent is able to establish that the proposed penalty would impair its ability to continue in business by providing Complainant with adequate financial documentation.

47. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$32,500 per day per violation for violations occurring on or before January 12, 2009 and up to \$37,500 per day per violation for violations occurring after January 12, 2009, as set forth below:

48. Count I: Improper Disposal. From at least June 18, 2010 to at least April 18, 2012, Respondent failed to properly dispose of leaked and/or spilled transformer oil containing PCBs from the Outdoors Transformer. The improper disposal of PCBs presents a great risk of harm to human health and the environment. In this case, the leaks and/or spills from the Outdoors

Transformer resulted in environmental contamination. 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.

49. Count II: Improper Disposal. From at least June 23, 2010 to at least April 18, 2012, Respondent failed to properly dispose of leaked and/or spilled transformer oil containing PCBs from Transformer #4486613 and Transformer #4486615. The improper disposal of PCBs presents a great risk of harm to human health and the environment. In this case, the leaks and/or spills from Transformer #4486613 and Transformer #4486615 resulted in environmental contamination. 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 cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system.

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, 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 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, Respondent must file a written Answer within thirty (30) days of Respondent's 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 Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's 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 Respondent denies any material fact or raises any affirmative defense, Respondent 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

Respondent should also send a copy of the Answer and all other documents which Respondent files 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 Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is 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.

8/3/12
Date


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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

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| In the Matter of: |) | |
| |) | |
| 290 Pratt Street, LLC |) | Docket No. TSCA-01-2012-0049 |
| c/o Flatiron Real Estate Advisors, LLC |) | |
| 119 West 23 rd Street |) | CERTIFICATE OF SERVICE |
| Suite 903 |) | |
| New York, NY 10011 |) | |
| |) | |
| Respondent. |) | |
| |) | |

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 |
|--|---|

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|---|--|
| Copy, including 40 C.F.R. Part 22 and PCB Penalty Policy (Certified Mail, Return Receipt Requested): | Mark Javello, Manager 290 Pratt Street, LLC c/o Flatiron Real Estate Advisors, LLC 119 West 23 rd Street New York, NY 10011 |
|---|--|

| | |
|------------------------|---|
| Dated: <u>8-3-2012</u> |  _____ Maximilian Boal Enforcement Counsel U.S. EPA, Region I 5 Post Office Square, Suite 100 (OES04-2) Boston, Massachusetts 02109-3912 |
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