

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:))
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Nicor Gas)) Docket No. TSCA-HQ-2015-5017
1844 Ferry Road))
Naperville, Illinois 60563))
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Respondent.))
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_____))

Respondent Nicor Gas (“Nicor”) submits this Answer to Complainant United States Environmental Protection Agency’s (“EPA”) Complaint and Notice of Opportunity for Hearing (the “Complaint”) pursuant to 40 C.F.R. § 22.15 and consistent with 5 U.S.C. § 552(a)(4)(B). To the extent any allegations in the Complaint are not expressly admitted, they are denied. Also, in accordance with 40 C.F.R. § 22.15(b), any averment by Nicor that it lacks knowledge or information sufficient to form a belief about the truth of an allegation shall have the effect of a denial.

I. RESPONSE TO COMPLAINT

A. Preliminary Statement

Complaint: This Complaint and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to 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. A copy of the Consolidated Rules of Practice is attached to this Complaint as Attachment A. The Complainant is Gregory A. Sullivan, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (“EPA” or “Complainant”), who has been duly delegated the authority to initiate this action. The Respondent is Nicor Gas (“Nicor” or “Respondent”), located at 1844 Ferry Road, Naperville, Illinois 60563-9600.

ANSWER: The Preliminary Statement is introductory in nature and contains no factual allegations requiring a response. To the extent a response is required, Nicor states that the Complaint speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint: Section 6 of TSCA, 15 U.S.C. § 2605, prohibits the use of polychlorinated biphenyls (“PCBs”), with limited defined exceptions. Pursuant to the authority of Section 6(e)(2)(B) of TSCA, 15 U.S.C. §2605(e)(2)(B), EPA has promulgated regulations that authorize the use of PCBs at concentrations greater than or equal to 50 parts per million (“[≥] 50 ppm”) in a natural gas pipeline system, provided the owner or operator of the system complies with the conditions of the use authorization. See 40 C.F.R. § 761.30(i) (“PCB use authorization regulations”). Under the PCB use authorization regulations, the owner or operator is required to satisfy six conditions in order to continue using PCBs at concentrations greater than or equal to 50 ppm in its natural gas pipeline system once it has discovered PCBs at such concentrations. This Complaint alleges that Nicor failed to comply with conditions of the PCB use authorization after discovering PCB at concentrations greater than or equal to 50 ppm in its natural gas pipeline system. Respondent’s failure to comply with these requirements violates Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

ANSWER: The Preliminary Statement is introductory in nature and contains no factual allegations requiring a response. To the extent a response is required, Nicor states that the Complaint, TSCA, and 40 C.F.R. Part 761 speak for themselves and denies any allegations or characterizations contrary thereto. Nicor also denies that it failed to comply with TSCA or 40 C.F.R. Part 761 and specifically denies any and all allegations contained in this paragraph.

B. Statutory and Regulatory Background

Complaint para. 1: TSCA establishes a comprehensive regulatory scheme to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment and to take action with respect to chemical substances and mixtures which are imminent hazards. 15 U.S.C. § 2601(b)(2).

ANSWER: Paragraph 1 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that TSCA speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 2: Among other things, Section 6(e) of TSCA, 15 U.S.C. § 2605(e), generally bans the manufacturing, processing, distribution in commerce, or use (except in a totally enclosed manner) of PCBs unless exempted or authorized by EPA through rulemaking as set forth at 40 C.F.R. Part 761.

ANSWER: Paragraph 2 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that TSCA and 40 C.F.R. Part 761 speak for themselves and denies any allegations or characterizations contrary thereto.

Complaint para. 3: Pursuant to TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), it is unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605.

ANSWER: Paragraph 3 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that TSCA speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 4: As set forth in Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), it is unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605. See also, 40 C.F.R. § 761.1(d).

ANSWER: Paragraph 4 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that TSCA and 40 C.F.R. Part 761 speak for themselves and denies any allegations or characterizations contrary thereto.

Complaint para. 5: 40 C.F.R. Part 761 establishes 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).

ANSWER: Paragraph 5 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 6: 40 C.F.R. Part 761 applies to all persons who manufacture, process, distribute in commerce, use or dispose of PCBs or PCB Items. 40 C.F.R. § 761.1(b).

ANSWER: Paragraph 6 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 7: Pursuant to 40 C.F.R. § 761.1(b)(2), unless otherwise noted, PCB concentrations shall be determined on a weight-per-weight basis (e.g., milligrams per kilogram),

or for liquids, on a weight-per-volume basis (e.g., milligrams per liter) if the density of the liquid is also reported. Unless otherwise provided, PCBs are quantified based on the formulation of PCBs present in the material analyzed. For example, measure Aroclor™ 1242 PCBs based on a comparison with Aroclor™ 1242 standards, and the measure of individual congener PCBs is based on a comparison with individual PCB congener standards.

ANSWER: Paragraph 7 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 8: Pursuant to 40 C.F.R. § 761.1(b)(3), most provisions in 40 C.F.R. Part 761 apply only to PCBs present in concentrations above a specified level. Provisions that apply to PCBs at concentrations of < 50 ppm apply also to contaminated surfaces at PCB concentrations of < 10 pg/100 cm². Provisions that apply to PCBs at concentrations of ≥ 50 ppm to < 500 ppm apply also to contaminated surfaces at PCB concentrations of ≥ 10 μg/100 cm² to < 100 μg/100 cm². Provisions that apply to PCBs at concentrations of ≥ 500 ppm apply also to contaminated surfaces at PCB concentrations of ≥ 100 μg/100 cm².

ANSWER: Paragraph 8 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 9: Pursuant to 40 C.F.R. § 761.3, “PCB” and “PCBs” means 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.

ANSWER: Paragraph 9 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 10: Pursuant to 40 C.F.R. § 761.3, a “person” means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and department, agency, or instrumentality of the Federal Government.

ANSWER: Paragraph 10 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 11: Pursuant to 40 C.F.R. § 761.3, a “natural gas pipeline system” means natural gas gathering facilities, natural gas pipe, natural gas compressors, natural gas storage facilities, and natural gas pipeline appurtenances (including instrumentation and vessels directly in contact with transported natural gas such as valves, regulators, drips, filter separators, etc., but not including air compressors).

ANSWER: Paragraph 11 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 12: Pursuant to 40 C.F.R. § 761.20(a), no persons may use any PCB in any manner other than in a totally enclosed manner within the United States, unless authorized under 40 C.F.R. § 761.30.

ANSWER: Paragraph 12 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 13: Pursuant to 40 C.F.R. § 761.30(i), the use and reuse of PCBs in natural gas pipeline systems is authorized only under certain conditions.

ANSWER: Paragraph 13 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 14: The PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A) provide that PCBs are authorized for use at concentrations ≥ 50 ppm in natural gas pipeline systems owned or operated by a seller or distributor of natural gas if the owner or operator complies with certain conditions.

ANSWER: Paragraph 14 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 15: Pursuant to the use authorization condition at 40 C.F.R. § 761.30(i)(1)(iii)(A)(2), within 120 days after discovery of PCBs ≥ 50 ppm in a natural gas pipeline system, or by December 28, 1988, whichever is later, the owner or operator of a natural gas pipeline system is required to characterize the extent of PCB contamination by collecting and

analyzing samples to identify the upstream and downstream end points of the pipeline segment or component where PCBs \geq 50 ppm were discovered.

ANSWER: Paragraph 15 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 16: Pursuant to the use authorization condition at 40 C.F.R. § 761.30(i)(1)(iii)(A)(3), within 120 days after characterization of the extent of PCBs \geq 50 ppm in a natural gas pipeline system, or by December 28, 1988, whichever is later, the owner or operator of a natural gas pipeline system is required to sample and analyze all potential sources of introduction of PCBs at concentrations \geq 50 ppm into its natural gas pipeline system.

ANSWER: Paragraph 16 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 17: “Potential sources” include natural gas compressors, natural gas scrubbers, natural gas filters, and interconnects where natural gas is received upstream from the most downstream sampling point where PCBs \geq 50 ppm were detected; potential sources exclude valves, drips, or other small liquid condensate collection points. 40 C.F.R. § 761.30(i)(1)(iii)(A)(3).

ANSWER: Paragraph 17 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 18: Pursuant to the use authorization condition at 40 C.F.R. § 761.30(i)(1)(iii)(A)(4), the owner or operator of a natural gas pipeline system is required to reduce all demonstrated sources of PCBs \geq 50 ppm to $<$ 50 ppm, or remove such sources from the natural gas pipeline system, or implement other engineering measures or methods to reduce PCB levels to $<$ 50 ppm and to prevent further introduction of PCBs \geq 50 ppm into the natural gas pipeline system within one year of characterization of the extent of the PCB contamination.

ANSWER: Paragraph 18 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 19: Pursuant to the use authorization condition at 40 C.F.R. § 761.30(i)(1)(iii)(A)(5), the owner or operator of a natural gas pipeline system is required to repeat sampling and analysis at least annually where PCBs are ≥ 50 ppm until sampling results indicate the concentration of PCBs in the natural gas pipeline segment or component is < 50 ppm in two successive samples with a minimum interval between samples of 180 days.

ANSWER: Paragraph 19 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 20: Owners or operators of natural gas pipeline systems which do not contain potential sources of PCB contamination described in 40 C.F.R. § 761.30(i)(1)(iii)(A)(3) containing PCBs ≥ 50 ppm are not subject to 40 C.F.R. § 761.30(i)(1)(iii)(A)(2)-(4) or 40 C.F.R. § 761.30(i)(1)(iii)(A)(6). Owners and operators of natural gas pipeline systems, however, must comply with the other provisions of 40 C.F.R. § 761.30(i) (e.g., sampling of any collected PCB liquid and record keeping).

ANSWER: Paragraph 20 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 21: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(C), all of the data collected and actions taken or not taken pursuant to the provisions of the use authorization for natural gas pipeline systems must be documented in writing and this information must be maintained for three years after the PCB concentrations in the natural gas pipeline system are reduced to < 50 ppm.

ANSWER: Paragraph 21 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 22: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(D), the Director, National Program Chemical Division, after consulting with the appropriate EPA Region(s) may, based on a finding of no unreasonable risk, modify in writing the requirements of 40 C.F.R. § 761.30(i)(1)(iii)(A), including extending any compliance date, approving alternative formats for documentation, waiving one or more requirements for a segment or component, requiring sampling and analysis, and requiring implementation of engineering measures to reduce PCB concentrations.

ANSWER: Paragraph 22 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 23: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(E), the owner or operator of a natural gas pipeline system may use historical data to fulfill the requirements of 40 C.F.R. § 761.30(i)(1)(iii)(A)(1)-(3). In addition, the owner or operator of a natural gas pipeline system may use documented historical actions to reduce PCB concentrations in known sources, decontaminate components or segments of natural gas pipeline systems, or otherwise reduce PCB levels to fulfill the requirements of 40 C.F.R. § 761.30(i)(1)(iii)(A)(4).

ANSWER: Paragraph 23 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 24: Pursuant to 40 C.F.R. § 761.30(i)(4), any person characterizing PCB concentrations in a natural gas pipeline system must do so by analyzing organic liquids collected in existing condensate collection points in the pipe or pipeline system. The level of PCB contamination found at a collection point is assumed to extend to the next collection point downstream. Any person characterizing multi-phasic liquids must do so in accordance with § 761.30(b)(4).

ANSWER: Paragraph 24 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

C. Factual Background

Complaint para. 25: Nicor is a corporation incorporated in the State of Illinois, where it is licensed to do business.

ANSWER: Nicor admits the allegations of Paragraph 25.

Complaint para. 26: Nicor is a seller and distributor of natural gas as a regulated public utility in the State of Illinois.

ANSWER: Nicor admits the allegations of Paragraph 26.

Complaint para. 27: On or about February 7, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components (i.e., gas meters) of its natural gas pipeline

system at three residences on Nicor's natural gas pipeline system located at 700 S. Seminary Road, 1540 W. Talcott Road, and 1440 W. Talcott Road in Park Ridge, Illinois.

ANSWER: Nicor admits only that on or about February 7, 2007, Nicor took samples from natural gas meters at three residences located in Park Ridge, Illinois, and that the samples were found to contain PCB-containing liquids in concentrations ≥ 50 ppm. Nicor admits only that the street addresses for those residences were 700 S. Seminary Road, 1540 W. Talcott Road, and 1440 W. Talcott Road. Nicor otherwise denies the allegations of Paragraph 27.

Complaint para. 28: Specifically, Nicor upon sampling and analyzing the liquids discovered at the gas meters, the results are as follows:

- a. 700 S. Seminary Avenue, Park Ridge, Illinois had a high PCB value of 5300 ppm;
- b. 1440 W. Talcott Road, Park Ridge, Illinois had a high PCB value of 5300 ppm; and
- c. 1540 W. Talcott Road, Park Ridge, Illinois had a high value of 5300 ppm.

ANSWER: Nicor admits only that on or around February 7, 2007, it took a combined sample of liquid that represented several Park Ridge residences, including 700 S. Seminary Avenue, 1440 W. Talcott Road, and 1540 W. Talcott Road, a sample which was found to contain PCBs at 5,300 ppm. Nicor otherwise denies the allegations of Paragraph 28.

Complaint para. 29: Nicor, on or about February 9, 2007, resampled the liquid discovered at the gas meter at 1440 W. Talcott Road, Park Ridge, Illinois and the analysis of that sample noted a PCB concentration of 1900 ppm.

ANSWER: Nicor denies the allegations of Paragraph 29.

Complaint para. 30: On or about February 9, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at a fourth residence on Nicor's natural gas pipeline system located at 1441 W. Talcott Road in Park Ridge, Illinois.¹

¹ Information as received from Nicor in June and/or July 2007, specified that PCBs at a concentration of 1300 ppm were discovered at 1441 W. Talcott Road, Park Ridge, Illinois. However, subsequent verbal information from Nicor indicated that the sample and analysis should be attributed to 1440 W. Talcott Road, Park Ridge, Illinois.

ANSWER: Nicor admits only that the February 2007 sample identified at 1441 W. Talcott Road should be attributed to 1440 W. Talcott Road. Nicor otherwise denies the allegations of Paragraph 30.

Complaint para. 31: Specifically, Nicor upon sampling and analyzing the liquids discovered at the gas meter at 1441 W. Talcott Road in Park Ridge, Illinois, the analysis specified a PCB concentration of 1300 ppm.

ANSWER: Nicor admits only that the February 2007 sample identified at 1441 W. Talcott Road should be attributed to 1440 W. Talcott Road. Nicor otherwise denies the allegations of Paragraph 31.

Complaint para. 32: On or about May 30, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components (i.e., gas meter) of its natural gas pipeline system at a fifth residence on Nicor's natural gas pipeline system located at 424 S. Delphia Avenue in Park Ridge, Illinois.

ANSWER: Nicor admits only that on or about May 30, 2007, Nicor took a sample from a natural gas meter at a residence located at 424 S. Delphia in Park Ridge, Illinois that was found to contain PCB-containing liquids in concentrations ≥ 50 ppm. Nicor otherwise denies the allegations of Paragraph 32.

Complaint para. 33: Specifically, Nicor upon sampling and analyzing the liquids discovered at the gas meter at 424 S. Delphia Avenue in Park Ridge, Illinois, the analysis specified a PCB concentration of 6000 ppm.

ANSWER: Nicor admits only that on or about May 30, 2007, Nicor took a sample of liquid from the meter at the street address 424 S. Delphia Avenue, Park Ridge, Illinois, and that the sample was found to contain PCBs at a concentration of 6,000 ppm. Nicor otherwise denies the allegations of Paragraph 33.

Complaint para. 34: On or about June 13, 2007, Nicor called and notified EPA that it had discovered PCBs in liquid condensate in gas meters at four locations (i.e., residences) on Nicor's natural gas pipeline system in Park Ridge, Illinois and the PCB concentrations were > 50 ppm. EPA "Record of Communication," Tony Martig (EPA), dated June 13, 2007.

ANSWER: Nicor admits only that on or about June 13, 2007, it disclosed to EPA that it had discovered PCB-containing liquids in natural gas meters at four residences in Park Ridge, Illinois, and the PCB concentrations were ≥ 50 ppm. Nicor is without sufficient information to either admit or deny the allegations related to the referenced EPA "Record of Communication," and therefore denies any allegations based on that document in Paragraph 34. Nicor otherwise denies the allegations of Paragraph 34.

Complaint para. 35: During the telephone conversation with EPA on June 13, 2007, Nicor stated that at two of the four locations (residences) the liquid/condensate passed through the gas meter and entered the gas pipe system in the residence. Id.

ANSWER: Nicor admits only that at two of the four residences, the liquids entered certain piping on the customer's side of the gas meter. Nicor is without sufficient information to either admit or deny the allegations related to the referenced EPA "Record of Communication," and therefore denies any allegations based on that document in Paragraph 35. Nicor otherwise denies the allegations of Paragraph 35.

Complaint para. 36: Nicor stated during the June 13, 2007 telephone call that Nicor is developing a sampling plan and will submit it to the Agency when it is final.

ANSWER: Nicor admits only that as of June 13, 2007, Nicor was developing a sampling plan that it intended to submit to the EPA. Nicor is without sufficient information to either admit or deny the remaining allegations of Paragraph 36 and therefore denies the same.

Complaint para. 37: On or about June 18, 2007, Nicor met with EPA to discuss the discovery of PCBs ≥ 50 ppm in the natural gas pipeline system

ANSWER: Nicor admits only that on or about June 18, 2007, Nicor met with EPA to discuss PCB-containing liquids that had been found in natural gas meters at four residences on with PCB concentrations that were ≥ 50 ppm. Nicor otherwise denies the allegations of Paragraph 37.

Complaint para. 38: On or about July 9, 2007, Nicor, working with EPA and state regulatory authorities to mitigate or eliminate the risk of customer exposure, began inspecting approximately 144 additional customer locations on Nicor's natural gas pipeline system in the vicinity of the residences located at 700 S. Seminary Road, 1540 W. Talcott Road, 1440 W. Talcott Road, 1441 W. Talcott Road and 424 S. Delphia Avenue in Park Ridge, Illinois for the presence of PCBs.

ANSWER: Nicor admits only that Nicor worked with EPA and state regulatory authorities to inspect other locations for the presence of PCBs in the vicinity of the residences located at 700 S. Seminary Road, 1540 W. Talcott Road, 1440 W. Talcott Road, and 424 S. Delphia Avenue in Park Ridge, Illinois. Nicor otherwise denies the allegations of Paragraph 38.

Complaint para. 39: On July 13, 2007, EPA issued an administrative subpoena to Nicor, pursuant to Section 11(c) of TSCA (15 U.S.C. § 2610(c)), regarding Nicor's natural gas pipeline distribution system servicing Park Ridge, Illinois. The administrative subpoena covered July 1, 2002 through July 13, 2007.

ANSWER: Nicor admits only that it received a subpoena duces tecum from the EPA that was dated July 13, 2007. Nicor further states that the subpoena duces tecum speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 40: EPA received Nicor's initial response on July 20, 2007. Nicor followed-up with information on July 20, 2007 and July 27, 2007.

ANSWER: Nicor admits only that it submitted responses to the EPA's subpoena duces tecum on July 20, 2007 and July 27, 2007. Nicor is without sufficient information to either admit or deny the remaining allegations of Paragraph 40 and therefore denies the same.

Complaint para. 41: During the inspections conducted between approximately July 9, 2007 and March 27, 2008, Nicor discovered PCBs in liquids at concentrations ≥ 50 ppm in or from components (e.g., meters, regulators) of its natural gas pipeline system at four additional customer locations on Nicor's natural gas pipeline system at the following locations: (a) Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; (b) Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois; (c) Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois; and (d) 610 S. Clifton Avenue, Park Ridge, Illinois.

ANSWER: Nicor admits only that PCBs at concentrations ≥ 50 ppm were found at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; Evergreen Presbyterian

Church, 207 S. Lincoln Avenue, Park Ridge, Illinois; and Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois. Nicor specifically denies that these samples were liquid samples. Nicor is without sufficient information to either admit or deny the allegations related to 610 S. Clifton Avenue, Park Ridge, Illinois, and therefore denies the same. Nicor denies the remaining allegations of Paragraph 41.

Complaint para. 42: Specifically, Nicor upon sampling and analyzing the liquids discovered at gas meters or regulators, the results were as follows:

- a. Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 1370-2400 ppm (split sample EPA and Nicor);
- b. Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois had a PCB concentration of 3350-1600 ppm (split sample EPA and Nicor);
- c. Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois had a PCB concentration of 1140-590 ppm (split sample EPA and Nicor); and
- d. 610 S. Clifton Avenue, Park Ridge, Illinois had a PCB concentration of 1400 ppm (Nicor sample).

ANSWER: Nicor admits only that PCBs at concentrations ≥ 50 ppm were found at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; Evergreen Presbyterian Church, 207 S. Lincoln Avenue, Park Ridge, Illinois; and Washington Elementary School, 1500 Stewart Avenue, Park Ridge, Illinois. Nicor specifically denies that these samples were liquid samples discovered at gas meters or regulators. Nicor is without sufficient information to either admit or deny the allegations related to 610 S. Clifton Avenue, Park Ridge, Illinois, and therefore denies the same. Nicor denies the remaining allegations of Paragraph 42.

Complaint para. 43: Nicor, on or about August 9, 2007, resampled the liquid discovered at the gas meter at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois; the analysis of that sample specified a PCB concentration of 6100-6200 ppm.

ANSWER: Nicor admits only that PCBs at concentrations ≥ 50 ppm were found at Lincoln Middle School, 200 S. Lincoln Avenue, Park Ridge, Illinois. Nicor denies the remaining allegations of Paragraph 43.

Complaint para. 44: Nicor has not provided any information to EPA to demonstrate that it returned to the locations listed in Paragraph 42 to repeat sampling and analysis at least annually where PCBs were ≥ 50 ppm until sampling results indicate that the natural gas pipeline component (e.g., meter or regulator) is < 50 ppm in two successive samples with a minimum interval between samples of 180 days.

ANSWER: Paragraph 44 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor denies the allegations in Paragraph 44.

Complaint para. 45: On or about June 25, 2007, in response to EPA's request pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A), Nicor stated that it reviewed the natural gas pipeline system to identify "potential sources" and determined that there were no known scrubbers, compressors or filters anywhere in the natural gas pipeline system that were sources of PCBs.

ANSWER: Nicor admits only that on or about June 25, 2007, Nicor prepared a document at the request of the EPA pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A)(1). Nicor further states that the June 25, 2007 response speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 45.

Complaint para. 46: On or about November 7, 2007, EPA requested Nicor provide information about the compressors, filters, scrubbers and interconnects owned by Nicor including the locations, whether the equipment was sampled, if so when and the results of any sampling including the Aroclor information.

ANSWER: Nicor admits only that it received a request for information by letter from EPA dated November 5, 2007. Nicor further states that the November 7, 2007 request speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 46.

Complaint para. 47: On or about November 20, 2007, in response to EPA's information request, Nicor: (a) identified 38 "compressors" and 35 "filters / separators / dust traps," in its natural gas pipeline system, (b) stated that it does not have scrubbers in its natural gas pipeline system, and (c) stated that Nicor does not own the interconnects.

ANSWER: Nicor admits only that on or about November 20, 2007, Nicor provided a response to an information request from the EPA. Nicor further states that the November 20, 2007 response speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 47.

Complaint para. 48: On or about November 20, 2007, in response to EPA's information request, Nicor stated that it continued to search its historical records for the information requested regarding the sampling and any results.

ANSWER: Nicor admits only that on or about November 20, 2007, Nicor provided a response to an information request from the EPA. Nicor further states that the November 20, 2007 response speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 48.

Complaint para. 49: Nicor has not provided historical data that meets the analytical protocol set out in 40 C.F.R. § 761.1(b)(2) for natural gas pipeline compressors, natural gas pipeline scrubbers, natural gas pipeline filters and interconnects.

ANSWER: Paragraph 49 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor states that 40 C.F.R. § 761.1(b)(2) speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations in Paragraph 49.

Complaint para. 50: On or about September 4, 2007, Nicor stated that at [sic] the interconnect station consist of facilities owned and operated by Nicor and facilities owned by the interstate pipeline providing Nicor with natural gas. Nicor also stated that in all cases the interstate pipeline owns and operates the valve(s) between Nicor's interconnect station facilities and those of the interstate pipeline's interconnect station facilities that allows the natural gas to flow from one natural gas pipeline system to the other natural gas pipeline system.

ANSWER: Nicor admits that the interstate pipeline owns and operates the valves between Nicor's interconnect station facilities and those of the interstate pipeline's interconnect station facilities that allows the natural gas to flow from one natural gas pipeline system to the other natural gas pipeline system. Nicor further admits only that on September 4, 2007, it put

together a supplemental production related to pipeline interconnects, which documents speak for themselves, and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 50.

Complaint para. 51: At the request of EPA, Nicor installed a drip on the natural gas pipe line that runs below Talcott Avenue in Park Ridge, Illinois (“Talcott Drip”) in November 2007. Nicor returned on numerous occasions and removed liquids from the Talcott Drip as follows:

- a. Talcott Drip, sampled November 28, 2007, PCB concentration 3100 ppm;
- b. Talcott Drip, sampled December 27, 2007, PCB concentration 3700 ppm;
- c. Talcott Drip, sampled January 29, 2008, PCB concentration 4200 ppm;
- d. Talcott Drip, sampled February 14, 2008, PCB concentration 2900 ppm;
- e. Talcott Drip, sampled February 28, 2008, PCB concentration 2900 ppm; and
- f. Talcott Drip, sampled March 27, 2008, PCB concentration 3300 ppm.

ANSWER: Nicor admits only that it installed a drip at 1506 Talcott Avenue in Park Ridge, Illinois, and that Nicor inspects that drip for liquids. Nicor specifically denies that this drip was installed at the request of EPA. Nicor further admits only that PCBs were found in liquids sampled from that drip on the following dates:

- a. November 28, 2007: PCB sample result of 3100 ppm;
- b. December 27, 2007: PCB sample result of 3700 ppm;
- c. January 29, 2008: PCB sample result of 4200 ppm;
- d. February 14, 2008: PCB sample result of 2900 ppm;
- e. February 28, 2008: PCB sample result of 2900 ppm; and
- f. March 27, 2008: PCB sample result of 3300 ppm.

Nicor otherwise denies the allegations of Paragraph 51.

Complaint para. 52: On or about January 29, 2013, an inspection was performed by Beth Unser of the Illinois Environmental Protection Agency at Nicor’s Hudson Storage facility in Hudson, Illinois. During the inspection, liquids were collected from a filter (36” O.D. x 8’

Horizontal Filter Separator, Serial # 1906-01A) and analyzed. The analysis of the liquid collected, conducted by the State, specified 180,000 µg/kg PCBs (i.e., 180 ppm).

ANSWER: Nicor admits only that on or about January 29, 2013, an inspection was performed by Beth Unser of the Illinois Environmental Protection Agency (“IEPA”) at Nicor’s Hudson Storage facility in Hudson, Illinois, at the request of the EPA, despite the fact that EPA and Nicor were in the middle of settlement negotiations, as set forth in Paragraph 54 of the Complaint, responded to below. During the inspection, liquids were collected from certain equipment. Nicor specifically denies that samples were collected from a filter. Upon information and belief, Nicor further admits only that IEPA’s analysis of the liquid collected was identified by the laboratory as potentially invalid. Nicor otherwise denies the allegations of Paragraph 52.

Complaint para. 53: To EPA’s knowledge, Nicor has not submitted a request for modification of the requirements under 40 C.F.R. § 761.30(i)(1)(iii)(D).

ANSWER: Paragraph 53 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor admits only that Nicor has not submitted a request for modification of the requirements under 40 C.F.R. § 761.30(i)(1)(iii)(D).

Complaint para. 54: On July 12, 2011, EPA requested that the Department of Justice (DOJ) initiate a civil litigation against Nicor Gas for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and violations of the conditions of the use authorization for PCBs in natural gas pipeline systems found at 40 C.F.R. § 761.30(i). On or about August 1, 2012, representatives of DOJ, EPA and Nicor entered into settlement negotiations. Nicor and the United States entered into several tolling agreements spanning May 16, 2012 through August 16, 2015. At EPA’s request, DOJ returned the referral on August 12, 2015.

ANSWER: Nicor is without sufficient information to either admit or deny the allegations in the first or fourth sentences of Paragraph 54. Nicor admits only that on or about August 1, 2012, representatives of DOJ, EPA and Nicor entered into settlement negotiations, and Nicor and the United States entered into several tolling agreements for the period from May 16, 2012 through September 16, 2015. Nicor otherwise denies the allegations of Paragraph 54.

D. Counts

Count I

(Failure to Characterize the Extent of PCB Contamination in Violation of the PCB Use Authorization Regulations)

Complaint para. 55: The allegations contained in paragraphs 1 through 54, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

ANSWER: Nicor adopts and incorporates by reference its responses to Paragraphs 1 through 54 as if fully stated herein.

Complaint para. 56: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A)(2), once an owner or operator of a natural gas pipeline system discovers PCBs at concentrations ≥ 50 ppm in its natural gas pipeline system, the TSCA PCB use authorization regulations require that the owner or operator “[w]ithin 120 days after discovery of PCBs ≥ 50 ppm in natural gas pipeline systems...characterizes the extent of PCB contamination by collecting and analyzing samples to identify the upstream and downstream end points of the segment or component where PCBs ≥ 50 ppm were discovered.”

ANSWER: Paragraph 56 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto. Nicor also specifically denies that 40 C.F.R. § 761.30(i)(1)(iii)(A)(2) applies to Nicor because Nicor’s natural gas pipeline system does not include potential sources of introduction of PCBs ≥ 50 ppm. *See* 40 C.F.R. § 761.30(i)(1)(iii)(B).

Complaint para. 57: On or about February 7, 2007 and February 9, 2007, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at four residences on Nicor’s natural gas pipeline system located in Park Ridge, Illinois. (See Paragraphs 27-33, above.)

ANSWER: Nicor admits only that on or about February 7, 2007, Nicor took samples at three customer residences located in Park Ridge, Illinois, and that the samples were found to contain PCBs in concentrations ≥ 50 ppm. Nicor otherwise denies the allegations of Paragraph 57.

Complaint para. 58: On or about June 13, 2007, 128 and 126 days following discovery of PCBs at concentrations ≥ 50 ppm, Nicor notified EPA.

ANSWER: Nicor admits only that on or about June 13, 2007, Nicor notified EPA that PCB-containing liquids were found in natural gas meters at four residences with PCB concentrations that were ≥ 50 ppm. Nicor otherwise denies the allegations of Paragraph 58.

Complaint para. 59: On or about June 18, 2007, 133 and 131 days following discovery of PCBs at concentrations ≥ 50 ppm, Nicor met with EPA to discuss characterizing the extent of the PCB contamination.

ANSWER: Nicor admits only that on or about June 18, 2007, Nicor met with EPA to discuss that PCB-containing liquids were found at four residences with PCB concentrations that were ≥ 50 ppm. Nicor otherwise denies the allegations of Paragraph 59.

Complaint para. 60: On or about July 9, 2007, 151 days and 149 days following the discovery of the PCBs, respectively, Nicor began inspecting approximately 144 additional customer locations on Nicor's natural gas pipeline system in Park Ridge, Illinois, for the presence of PCBs.

ANSWER: Nicor admits only that in conjunction with and at the request of EPA, Nicor inspected other locations for the presence of PCBs in Park Ridge, Illinois. Nicor otherwise denies the allegations of Paragraph 60.

Complaint para. 61: During the inspections conducted between approximately July 9, 2007 and March 27, 2008, and upon collecting and analyzing liquid samples, Nicor discovered PCBs at concentrations ≥ 50 ppm in or from components of its natural gas pipeline system at four additional customer locations in Park Ridge, Illinois, on Nicor's natural gas pipeline system. (See Paragraphs 41-43.)

ANSWER: Nicor admits only that PCBs at concentrations ≥ 50 ppm were found at other locations where samples were taken. Nicor specifically denies that PCB liquids at ≥ 50 ppm were found within or were from Nicor's natural gas pipeline system and Nicor otherwise denies the allegations of Paragraph 61.

Complaint para. 62: Nicor did not within 120 days of discovering PCBs at concentrations ≥ 50 ppm at the four customer locations in Park Ridge, Illinois (see Paragraphs 27-33, above), characterize the extent of the PCB contamination by collecting and analyzing

samples to identify the upstream and downstream endpoints of the segment or component where PCBs at concentrations ≥ 50 ppm were discovered.

ANSWER: Paragraph 62 states a legal conclusion to which a response is not required.

To the extent a response is required, Nicor denies the allegations of Paragraph 62. Nicor also specifically denies that 40 C.F.R. § 761.30(i)(1)(iii)(A)(2) applies to Nicor because Nicor's natural gas pipeline system does not include potential sources of introduction of PCBs ≥ 50 ppm. *See* 40 C.F.R. § 761.30(i)(1)(iii)(B). Nicor otherwise denies the allegations of Paragraph 62.

Complaint para. 63: Nicor's failure to characterize the extent of the PCB contamination by collecting and analyzing samples to identify the upstream and downstream endpoints of the segments or components where PCBs at ≥ 50 ppm were discovered at the customer locations in Park Ridge, Illinois, within 120 days of discovery constitutes a failure or refusal to comply with the TSCA PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A)(2).

ANSWER: Nicor denies the allegations in Paragraph 63.

Complaint para. 64: Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

ANSWER: Paragraph 64 states a legal conclusion to which a response is not required.

To the extent a response is required, Nicor states that TSCA speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 65: Nicor's failure to comply with 40 C.F.R. § 761.30(i)(1)(iii)(A)(2) in a timely manner constitutes a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

ANSWER: Nicor denies the allegations in Paragraph 65.

Count 2

(Failure to Identify All Potential Sources of PCB Contamination in Violation of Use Authorization Regulations)

Complaint para. 66: The allegations contained in paragraphs 1 through 65, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

ANSWER: Nicor adopts and incorporates by reference its responses to Paragraphs 1 through 65 as if fully stated herein.

Complaint para. 67: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A)(3), “within 120 days of characterization of the extent of PCB contamination,” the use authorization regulations require that an owner or operator of a natural gas pipeline system “sample[s] and analyze[s] all potential sources of introduction of PCBs into the natural gas pipeline system for PCBs \geq 50 ppm.”

ANSWER: Paragraph 67 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto. Nicor also specifically denies that 40 C.F.R. § 761.30(i)(1)(iii)(A)(3) applies to Nicor because Nicor’s natural gas pipeline system does not include potential sources of introduction of PCBs \geq 50 ppm. *See* 40 C.F.R. § 761.30(i)(1)(iii)(B). Nicor otherwise denies the allegations of Paragraph 67.

Complaint para. 68: The TSCA PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A)(3) define “potential sources” to include natural gas compressors, natural gas scrubbers, natural gas filters, and interconnects where natural gas is received upstream from the most downstream sampling point where PCBs \geq 50 ppm were detected. Potential sources exclude valves, drips, or other small liquid condensate collection points.

ANSWER: Paragraph 68 does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 68.

Complaint para. 69: On or about November 20, 2007, Nicor identified 38 “compressors”, 35 “filters/separators/dust traps,” and interconnects in its natural gas pipeline system, in response to an EPA information request dated November 5, 2007.

ANSWER: Nicor states that EPA’s November 5, 2007 request and Nicor’s November 20, 2007 response speak for themselves and denies any allegations or characterizations contrary thereto. Nicor otherwise denies the allegations of Paragraph 69.

Complaint para. 70: The natural gas pipeline compressors, natural gas pipeline filters and interconnects identified by Nicor are “potential sources” under 40 C.F.R. § 761.30(i)(1)(iii)(A)(3).

ANSWER: Paragraph 70 states a legal conclusion to which a response is not required.

To the extent a response is required, Nicor denies the allegations in Paragraph 70.

Complaint para. 71: Nicor’s failure to identify and sample and analyze natural gas pipeline compressors, natural gas pipeline filters and interconnects within 120 days of characterization of the extent of PCB contamination constitutes a failure or refusal to comply with the PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A)(3).

ANSWER: Nicor denies the allegations in Paragraph 71.

Complaint para. 72: Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

ANSWER: Paragraph 72 states a legal conclusion to which a response is not required.

To the extent a response is required, Nicor states that TSCA speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 73: Nicor’s failure to comply with 40 C.F.R. § 761.30(i)(1)(iii)(A)(3) constitutes a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

ANSWER: Nicor denies the allegations in Paragraph 73.

Count 3

(Failure to Repeat Sampling and Analysis of PCB Contamination in Violation of Use Authorization Regulations)

Complaint para. 74: The allegations contained in paragraphs 1 through 73, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

ANSWER: Nicor adopts and incorporates by reference its responses to Paragraphs 1 through 74 as if fully stated herein.

Complaint para. 75: Pursuant to 40 C.F.R. § 761.30(i)(1)(iii)(A)(5), the owner or operator shall repeat “sampling and analysis at least annually where PCBs \geq 50 ppm, until sampling results indicate the natural gas pipeline segment or component is $<$ 50 ppm in two successive samples with a minimum interval between samples of 180 days.”

ANSWER: Paragraph 75 states a legal conclusion to which a response is not required.

To the extent a response is required, Nicor states that 40 C.F.R. Part 761 speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 76: Nicor did not return to the four locations specified in Paragraph 41 to repeat sampling and analysis at least annually where PCBs are ≥ 50 ppm until sampling results indicate that the natural gas pipeline component (e.g., meter or regulator) is < 50 ppm in two successive samples with a minimum interval between samples of 180 days.

ANSWER: Nicor specifically denies that it is required to conduct repeat sampling and analysis at the locations specified in Paragraph 41 and Nicor otherwise denies the allegations in Paragraph 76.

Complaint para. 77: Nicor's failure to return to the four locations to perform repeat sampling and analysis at least annually until the sampling results indicated that the natural gas pipeline component is < 50 ppm constitutes a failure or refusal to comply with the TSCA PCB use authorization regulations at 40 C.F.R. § 761.30(i)(1)(iii)(A)(5).

ANSWER: Nicor denies the allegations in Paragraph 77.

Complaint para. 78: Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), makes it unlawful for any person to fail or refuse to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605.

ANSWER: Paragraph 78 states a legal conclusion to which a response is not required. To the extent a response is required, Nicor states that TSCA speaks for itself and denies any allegations or characterizations contrary thereto.

Complaint para. 79: Nicor's failure to comply with 40 C.F.R. § 761.30(i)(1)(iii)(A)(5) constitutes a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

ANSWER: Nicor denies the allegations in Paragraph 79.

II. RESPONSE TO PROPOSED CIVIL PENALTY

Section II (Civil Penalty Assessment) does not contain factual allegations, to which a response would be required. To the extent a response is required, Nicor denies that it failed to comply with TSCA or 40 C.F.R. Part 761. As a result, Nicor denies that the Complaint's

proposed \$311,454.50 penalty is appropriate. If EPA fails to establish all or some of the violations alleged in the Complaint, Nicor states that the proposed penalty should be rejected or reduced accordingly. Moreover, Nicor reserves the right to challenge the proposed penalty amount after EPA discloses how it calculated the proposed penalty.

III. REQUEST FOR HEARING

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.15, Nicor requests a formal hearing to contest material facts set forth in the Complaint and to contest the appropriateness of the proposed penalty. Nicor also requests Alternative Dispute Resolution in the form of a confidential settlement process for resolving the case upon terms mutually agreeable to the parties, with an Administrative Law Judge serving as a mediator, facilitator, or neutral evaluator.

IV. DEFENSES

1. Nicor adopts and incorporates its responses and denials to Paragraphs 1 through 79 of the Complaint as defenses to EPA's factual and legal allegations.
2. 40 C.F.R. §§ 761.30(i)(1)(iii)(A)(2)&(3)—the basis for Counts I and II of the Complaint—do not apply to Nicor because Nicor's natural gas pipeline system does not include potential sources of introduction of PCBs \geq 50 ppm. *See* 40 C.F.R. § 761.30(i)(1)(iii)(B). To the contrary, Nicor established years ago that its system does not include potential sources of PCBs \geq 50 ppm and that the most likely source of any PCB contamination is outside of Nicor's natural gas pipeline system, including suppliers of natural gas to Nicor.
3. Even if 40 C.F.R. §§ 761.30(i)(1)(iii)(A)(2)&(3) applied to Nicor's natural gas pipeline system (and they do not), Nicor complied by characterizing the extent of PCB contamination and analyzing all potential sources of PCBs years ago. *See, e.g.*, 40 C.F.R. § 761.30(i)(1)(iii)(E) (authorizing the use of historic data to fulfill the characterization and

analysis requirements). The regulation imposes a one-time characterization and analysis requirement (e.g., “Within 120 days after discovery of PCBs \geq 50 ppm ... or by December 28, 1998, whichever is later”), and does not require re-characterization or re-analysis every time PCBs \geq 50 ppm are subsequently detected in Nicor’s system.

4. The analytical requirements in 40 C.F.R. § 761.1(b)(2)—first enacted in 1998—cannot apply retroactively to Nicor’s historic, pre-1998 data. 40 C.F.R. § 761.30(i)(1)(iii)(E) expressly authorizes the use of historic data to fulfill characterization and analysis requirements without subjecting historic data to 40 C.F.R. § 761.1(b)(2). Moreover, to retroactively impose new requirements on Nicor’s then-existing historic data would deprive Nicor of Due Process of law and Equal Protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, the Administrative Procedure Act, and TSCA.

5. EPA’s claims are barred, in whole or in part, because the legal theories advanced in the Complaint differ from EPA’s long-standing interpretation of TSCA and associated regulations and are arbitrary and capricious and do not comply with the requirements of the Administrative Procedure Act.

6. EPA’s claims are barred, in whole or in part, because TSCA, implementing regulations and agency guidance did not provide and have not provided fair notice of the interpretations of law now advanced in the Complaint. Accordingly, EPA’s efforts to enforce retroactively those new interpretations deprive Nicor of Due Process of law and Equal Protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, the Administrative Procedure Act, and TSCA.

7. EPA's claims are barred, in whole or in part, because 40 C.F.R. § 761.30(i)(4) requires that a person characterizing PCB contamination do so by analyzing liquids collected at existing condensate collection points and Nicor's actions complied with that requirement.

8. 40 C.F.R. § 761.30(i)(1)(iii)(A)(5)—the basis for Count III of the Complaint—does not apply because the PCBs allegedly detected in the four locations at issue in Count III (Compl. ¶¶ 41, 76) did not come from Nicor's natural gas pipeline system in the first place and therefore are not subject to TSCA's use authorization for PCBs in natural gas pipeline systems. To the contrary, sampling and analysis of the PCBs detected at Lincoln Middle School, Evergreen Presbyterian Church, and Washington Elementary showed that the PCBs were associated with other sources not associated with Nicor's natural gas pipeline system.

9. EPA's claims are barred, in whole or in part, to the extent the PCBs at issue were detected in customer owned service lines or appliances or were otherwise found in natural gas pipeline systems not owned or operated by Nicor.

10. EPA's claims are barred, in whole or in part, by the doctrine of selective enforcement. EPA has known since at least 1981 that PCBs are present within natural gas pipeline systems and that the sources of PCBs include historic lubricants and oils used by the natural gas transmission companies that sell gas to natural gas distributors like Nicor. EPA has invidiously singled out Nicor for enforcement in an irrational and wholly arbitrary manner while natural gas transmission companies and other similarly situated natural gas distributors have not been subject to enforcement.

11. EPA's claims are barred, in whole or in part, by the doctrine of laches. Nicor has repeatedly notified EPA of historic data and its historic work to characterize PCBs in its natural gas pipeline system, including in the early 1980s and 2007. EPA never voiced any objection or

concern to Nicor's approach until 2012, nearly five years after the discovery of PCBs in certain locations in Park Ridge. Nicor has been prejudiced by EPA's delay because while Nicor has documented its historic data and historic characterization efforts, witnesses and records have inevitably been lost. For example, Nicor's long-time Coordinator of Codes and Environmental Engineering, who oversaw Nicor's characterization work in the early 1980s, is now deceased.

12. The claims asserted and relief sought by EPA are barred, in whole or in part, by the equitable doctrine of estoppel. Nicor has reasonably relied upon affirmative conduct and representations by EPA, including long-standing written guidance, in managing PCBs in its natural gas pipeline system in compliance with TSCA and associated regulations. If the interpretation or enforcement policy and proposed penalty now espoused by EPA in its Complaint are permissible under TSCA and associated regulations, EPA is estopped from asserting that interpretation or implementing that enforcement policy because EPA has wrongfully misled Nicor regarding the requirements of TSCA and associated regulations and enforcement policy as they apply to Nicor, and application of the new interpretation and enforcement policy would cause Nicor significant harm and injury.

13. EPA's claims are barred, either in whole or in part, because it seeks to impose an excessive fine in violation of the Eighth Amendment to the United States Constitution.

Dated: October 21, 2015

NICOR GAS COMPANY

By: /s/ Mark R. Ter Molen
One of Its Attorneys

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CERTIFICATE OF SERVICE

I certify that the foregoing Respondent's Answer to Complaint and Request for Hearing, dated October 21, 2015, was sent this day in the following manner to the addressees listed below:

Original and Copy by Hand Delivery to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

Courtesy Copy by email to:

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