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290 PRATT STREET, LLC

c/o Flatiron Real Estate Advisors
119 West 23rd Street, Suite 903
New York, NY 10011

September 25, 2012

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

Re: **Response to EPA Administrative Complaint**
290 Pratt Street, LLC
Meriden, CT
Docket No. TSCA-01-2012-0049

Dear Ms. Santiago:

The following is the response to EPA's Administrative Complaint against 290 Pratt Street, LLC (the "Respondent") and request for hearing regarding the Meriden Enterprise Center (the "site") located at 290 Pratt Street in Meriden, CT. We received the Complaint by certified mail on August 6, 2012.

We strongly object to the Complaint regarding "improper disposal of polychlorinated biphenyls ("PCBs")" and potential penalties. Since acquiring the site on December 30, 2003, we have made substantial progress in cleaning up the site and putting the brownfield site back into productive use. Additionally, since the time of the PCB spill, we have made substantial progress in removing PCB-containing equipment, that we were not definitively aware of, and remediating the affected areas of the spill. Please note that we did not cause any of the environmental conditions which required cleanup; however, we have expended significant funds to address these issues. All of these facts are presented in more detail below.

Site History

Manufacturing operations began at the site in approximately 1884 with woolen goods production (Willow Dale Company Woolen Goods, Rawitzer, and Meriden Wollen Mills) until the 1920s. The facility was then converted to ball bearing manufacturing by New Departure Hyatt Bearing Division of General Motors Corporation. New Departure was in operation at the site from the 1920s until 1969. From 1970 to about 1983, vacuum bottle and meat chopping equipment were manufactured at the site by Union Manufacturing and The Charles Parker Co. Since 1985 the site has been known as the Meriden Enterprise Center (MEC) and operates as a mixed use facility with office, warehouse and storage space, and light industrial and commercial operations. As indicated above, we acquired the site at the end of 2003.

Non-PCB Remediation Activities

Historic manufacturing activities have resulted in significant environmental impacts to the site including petroleum impacts from a metal chip pile and underground storage tanks. In 2006, we hired Tighe & Bond, Inc. (Tighe & Bond) a reputable environmental engineering firm, to help us investigate and remediate the site. We discovered that petroleum (cutting oil) is present on the water table over an area of approximately one acre from the former bearing manufacturing operations. In 2009, we installed an in-situ remediation system to address these concerns. To date we have spent approximately \$872,000 investigating and remediating the site for non-PCB impacts.

PCB Remediation Activities

We have made significant progress in removal and proper disposal of PCB-containing equipment and environmental cleanup since the spill was reported in June 2010. We hired reputable environmental contractors including Clean Harbors and AES Remedial Contracting to perform removal/remediation work under the observation of Tighe & Bond. A chronology of this work is as follows:

- The spill was reported to CTDEEP on June 22nd, 2010 after it was confirmed by laboratory sampling that the residual material on the concrete pad adjacent to the outside transformer contained PCB.
- Subsequent to this discovery we immediately made arrangements to have the leaked fluid sampled and tested for PCB and the transformer emptied of all liquids. Clean Harbors collected a sample from the transformer on June 22nd 2010. The transformer was pumped of all liquids on June 25th, 2010 and the PCB-containing fluid in the outside transformer was disposed of properly.
- December 14-16, 2010 – Clean Harbors removed and properly disposed the outdoor transformer, seven indoor transformers, and switch gear
- December 2010 to April 2012 – AES remediated the exterior transformer pad and impacted soil, concrete and asphalt. Several mobilizations and confirmatory sampling rounds had to be conducted to remove all of the PCB impacted media. We were following the schedule provided to CTDEEP and EPA in response to the CTDEEP Notice of Violation. CTDEEP approved this schedule and EPA never provided a response indicating it was unacceptable. In the schedule we said remediation would be completed by December 2011. However, due to field conditions, five separate mobilizations were required to clean-up all the PCBs impacted concrete and soil.

We have been working closely with the CT Department of Energy and Environmental Protection (CTDEEP) throughout the course of the PCB cleanup. To date we have spent approximately \$230,000 investigating and remediating the site for PCB impacts.

Response to Allegations

In accordance with 40 CFR § 21.15(b), the following is our "Answer" or responses to the General Allegations of the EPA Complaint. These Allegations are listed as #8 to #30 on pages 2 to 4 of the Complaint.

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

Response: Yes.

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

Response: Yes.

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

Response: Yes.

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

Response: OK.

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

Response: Yes.

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

Response: Yes.

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

Response: Yes. The residuals on the pad were sampled and according to our consultant, it was uncertain if this represented the oil in transformer at the time.

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

Response: We agree with this allegation. We received the laboratory results of this sample on June 22nd confirming that the residuals on the concrete pad contained PCB. Subsequent to this discovery we immediately made arrangements to have the leaked fluid sampled and tested for PCB and the transformer emptied of all liquids. Clean Harbors collected a sample from transformer for their proposal development on June 22nd. The transformer was pumped of all liquids on June 25th, 2010.

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 Outdoor Transformer.

Response: Our consultant Tighe and Bond notified CTDEEP on June 22nd immediately after they received the PCB result from the lab.

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.

Response: Yes.

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

Response: We can't confirm or refute when the CTDEEP was provided with this report.

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

Response: We disagree with this allegation. The report is 26 years old and we had no recent knowledge of the PCB content of the transformer when we purchased the site in late 2003 and prior to the spill and removal of the transformer in 2010. The transformer was also in use at the time we purchased the property.

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

Response: We agree.

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").

Response: We agree.

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

Response: We agree.

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

Response: We agree.

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.

Response: We disagree with this allegation. The report is 26 years old and we had no recent knowledge of the PCB contents of the transformers when we purchased the site in 2003 and prior to the removal of the transformers in 2010. The transformers were also in use at the time we purchased the property.

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

Response: We can't agree or disagree with this statement. If there was a spill at that time, we had to assume that the spill noted in the report was reported to CTDEEP and cleaned up according to 40 CFR 761 which was promulgated at the time. Furthermore, we had previously sampled the stained concrete and residual in the floor drain in this room in November of 2004 and did not detect any PCBs.

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

Response: There may have been staining but there was no evidence of liquid or wet areas. This is an industrial building. Any staining could have been dirt or some condensate that had accumulated on the floor. We had no reason to believe that this was from the transformers or the spill reported years ago. If a spill was reported in 1986 it should have been cleaned up to the required standards at some point shortly after it was reported to CTDEP. We would have had no reason to believe that this was not done given that CTDEP was alerted. Furthermore, we had our consultants sample the floor and floor drain in this room for PCB in November of 2004. The laboratory results did not detect any PCBs in the

stained areas of concrete or in the floor drain residuals. In addition, this room has a concrete floor with no cracks, and it was securely locked with very limited access, hence, no threat to health and safety or the environment.

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

Response: We agree with this allegation. However, the units were drained of all PCB oils to eliminate any threat to health and safety, and the environment on June 25, 2010.

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

Response: We agree with this allegation. However, this transformer was drained of all PCB oil on June 25, 2010 to remove any significant threat to health, safety or the environment.

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.

Response: We disagree with this allegation. The report is 26 years old and we had no recent knowledge of the PCB contents of the transformers when we purchased the site in 2003 and prior to the spill and removal of the transformers in 2010.

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.

Response: We disagree with this allegation based on all the previous responses.

Count 1: We did not actively dispose of any PCB waste, it was an accidental spill. Arguably it was not "uncontrollable as we discovered the leak and immediately drained the transformer of its oil. Upon removal of the transformer, we immediately removed the visibly impacted concrete from the support pad. Furthermore, the transformer was surrounded by a fence thus eliminating unauthorized access to the unit. We removed additional non-visibly impacted concrete and some of the surrounding soil as part of our post-removal sampling and remediation.

Count 2: There was no evidence of a spill from any of these units; there were no wet areas around the transformers although there was some staining on the floor of the transformer room. Given the visible evidence of staining, we sampled the floor in November 2004 and did not detect any PCBs, hence there was no current spill, or as EPA defines it, improper disposal and we had no reason to believe that there was a spill of PCB. Furthermore, given a spill from 1986 and CTDEP's knowledge of this spill and the PCB containing transformers, the spill would have been cleaned to the CTDEP's and USEPA's standards and the owners of the transformers should have been made to comply with regulatory requirements, therefore, we had no reason to believe that we were out of compliance.

Summary

As you can see, we have been proactive in investigating and remediating this underutilized brownfield site and have spent approximately \$1,100,000 to date. We were not aware of any PCB-containing fluids in the electrical equipment when we purchased the site in 2003 and assumed that the seller was in compliance with PCB regulations. The Complaint mentions a 1986 report indicating that PCBs were present in the on-site equipment and two transformers were leaking; however, that was 17 years before we purchased the site. Furthermore, if this was the case, given that it was reported to CTDEP, we would have to assume that the leaking units were emptied and the spill was cleaned to regulatory standards, and the other units were maintained in compliance with CTDEP standards. Furthermore, we sampled the visibly stained areas on the floor and the floor drain of this transformer room and did not detect PCBs. We became aware of PCBs in electrical equipment after the spill occurred when the residuals were sampled. Once we discovered PCBs were present, we aggressively removed the PCB-containing fluids and equipment and cleaned up the impacts at a considerable expense.

We look forward to presenting our case at the hearing so please advise me of the date. If you have any questions, you can contact me at (646)246-3947 or mjavello@earthlink.net.

Regards,



Mark Javello
Member
290 Pratt Street LLC

Copy: Maximilian Boal, Enforcement Counsel – EPA
James Olsen, LEP – Tighe & Bond, Inc.