UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :	)	**Docket Number TSCA-HQ-2015-5017**
Nicor Gas **1844 Ferry Road** **Naperville, Illinois 60563**	)	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**
Respondent.	)	

I. COMPLAINT

A. Preliminary Statement

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.

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 authorizations 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).

B. Statutory and Regulatory Background

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).
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.
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.

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).

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).

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).

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.

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 µg/100 cm^2. 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 cm^2 to < 100 µg/100 cm^2. Provisions that apply to PCBs at concentrations of ≥ 500 ppm apply also to contaminated surfaces at PCB concentrations of ≥ 100 µg/100 cm^2.

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.

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.

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 values, regulators, drips, filter separators, etc., but not including air compressors).

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.

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.

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 $\geq$ 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.

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 $\geq$ 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 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 ≥ 50 ppm were discovered.

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 ≥ 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 ≥ 50 ppm into its natural gas pipeline system.

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 ≥ 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*).

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 ≥ 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 ≥ 50 ppm into the natural gas pipeline system within one year of characterization of the extent of the PCB contamination.

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.

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).

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.

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 measurers to reduce PCB concentrations.

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, de-contaminate 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*).

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).

C. Factual Background

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

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

27. On or about February 7, 2007, Nicor discovered PCBs at concentrations $\geq$ 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.

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.

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.

30. On or about February 9, 2007, Nicor discovered PCBs at concentrations $\geq$ 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]

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.

32. On or about May 30, 2007, Nicor discovered PCBs at concentrations $\geq$ 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.

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.

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.

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.

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.

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[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.

37. On or about June 18, 2007, Nicor met with EPA to discuss the discovery of PCBs $\geq$ 50 ppm in the natural gas pipeline system

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, 1441W. Talcott Road and 424 S. Delphia Avenue in Park Ridge, Illinois for the presence of PCBs.

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.

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

41. During the inspections conducted between approximately July 9, 2007 and March 27, 2008, Nicor discovered PCBs in liquids at concentrations $\geq$ 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.

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).

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.

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 $\geq$ 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.

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.

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.

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.

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.

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.

50. On or about September 4, 2007, Nicor stated that at 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.

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.

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).

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).

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.

D. Counts

Count I

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

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

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."

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.)

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

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.

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.

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.)

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.

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*).

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.

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).

Count 2

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

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

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 ≥ 50 ppm."

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 ≥ 50 ppm were detected. Potential sources exclude valves, drips, or other small liquid condensate collection points.

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.

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*).

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*).

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.

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).

Count 3

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

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

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 ≥ 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."

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.

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*).

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.

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).

II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of Section 15 of TSCA, 15 U.S.C. § 2614, in the maximum amount of $25,000 for each day of violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust penalties to account for inflation. EPA's Civil Monetary Penalty Inflation Adjustment Rule establishes $37,500 as the

maximum civil penalty that may be assessed under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for each day of violation occurring after January 12, 2009. See 40 C.F.R. Part 19.

For purposes of determining the amount of a civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and EPA's *Polychlorinated Biphenyls (PCB) Penalty Policy* (April 9, 1990) (see Attachment B), and the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy,* which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980) (see Attachment C). The policies provide rational, consistent, and equitable calculation methodologies for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of $ 311,454.50 for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A 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, Respondent has the right to request a formal hearing to contest any

material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within 30 days of service of this Complaint, at the following address:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. See Attachment A.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within 30 days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter, as follows:

Christine McCulloch, Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2246-A)
Washington, D.C. 20460
Telephone: (202) 564-4008
Email: mcculloch.christine@epa.gov

IV. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement. A Consent Agreement signed by EPA and Respondent would be binding as to all terms and conditions specified therein upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. See 40 C.F.R. § 22.8.

V. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, you may pay the proposed penalty to resolve this matter. See 40 C.F.R. § 22.18(a).

Such payment should be made by sending either a cashier's or certified check with a notation of "Nicor Gas, Penalty Docket No. TSCA-HQ-2015-5017", payable to the order of the "Treasurer, United States of America", to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2015-5017
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Nicor Gas, Penalty Docket No. TSCA-HQ-2015-5017" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

A copy of the check or other instrument of payment should be sent to the attorney of record assigned to represent EPA in this matter.

In the Matter of Nicor Gas
(Docket Number TSCA-HQ-2015-5017)

By:

_____ Date: 9/15/15

Gregory A. Sullivan, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

ATTACHMENTS

Attachment A	Consolidated Rules of Practice, 40 C.F.R. Part 22.
Attachment B	*Polychlorinated Biphenyls (PCB) Penalty Policy* (April 9, 1990).
Attachment C	*Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy,* 45 Fed. Reg. 59,770 (Sept. 10, 1980).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :	**Docket Number TSCA-HQ-2015-5017**
Nicor Gas **1844 Ferry Road** **Naperville, Illinois 60563**	**CERTIFICATE OF SERVICE**
Respondent.	

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2015-5017, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Melvin D. Williams
President
Nicor Gas
1844 Ferry Road
Naperville, Illinois 60563

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SEPTEMBER 15, 2015
Date