



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

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Office of Regional Hearing Clerk

May 20, 2014

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

BY HAND

Re: *In re Environmental Services, Inc.*
Docket No. TSCA-01-2014-0003

Dear Ms. Santiago:

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

Thank you for your attention to this matter.

Sincerely,


Maximilian Boal
Enforcement Counsel

Enclosure

cc: Dustin Mitchell, President, Environmental Services, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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Office of Regional Hearing Clerk

_____)	
In the Matter of:)	
Environmental Services, Inc.)	Docket No. TSCA-01-2014-0003
90 Brookfield Street)	ADMINISTRATIVE COMPLAINT
South Windsor, CT 06074)	AND
Respondent.)	NOTICE OF
_____)	OPPORTUNITY FOR HEARING

I. Statutory and Regulatory Basis

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing to Environmental Services, Inc. (“Respondent”) under Section 16 of the Toxic Substances Control Act (“TSCA”) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

2. This Complaint notifies Respondent that EPA intends to assess penalties for alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and the federal regulations entitled, “Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions” (the “PCB Regulations”), 40 C.F.R. Part 761. The alleged violations involve omissions and inaccuracies in a waste manifest for waste containing PCBs.

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

4. The PCB Regulations at 40 C.F.R. Part 761 were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

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

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

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

II. General Allegations

8. Respondent is an environmental contractor and is a corporation formed under the laws of the State of Connecticut.

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

10. The State of Connecticut Department of Construction Services hired Respondent to remove known abandoned fuel tanks and to investigate the presence of other abandoned tanks at the Emmett O’Brien Technical High School located at 141 Prindle Avenue, Ansonia, CT 06401 (the “Facility”), which is owned by the State of Connecticut Technical High School System.

11. On or about August 23, 2012, Respondent excavated near the location of a former car wash at the Facility and found waste petroleum sludge in a dry well.

12. On or about August 24, 2012, the Connecticut Department of Energy and Environmental Protection (“CTDEEP”), Emergency Response Unit, responded to a reported incident from Respondent regarding the release of an unknown petroleum product at the Site.

13. Underneath the dry well, Respondent discovered an underground storage tank at the Facility.

14. On or about August 29, 2012, liquid waste oil was discovered in the underground storage tank at the Facility.

15. CTDEEP returned to the Facility on or about August 29, 2012 and August 30, 2012. CTDEEP conducted an inspection of the Facility to review Respondent’s compliance with Section 6(e) of TSCA and 40 C.F.R. Part 761.

16. On or about August 29, 2012, Respondent pumped out approximately 543 gallons of liquid waste oil from the underground storage tank at the Facility.

17. On or about August 29, 2012, Respondent washed the underground storage tank and added 170 gallons of wash water to the 543 gallons of waste oil for a total waste load of 713 gallons.

18. On or about August 29, 2012, Respondent collected samples of the liquid waste from the underground storage tank at the Facility and sent them to Phoenix Environmental Laboratories for analysis.

19. Before receiving back the sampling results, on or about August 29, 2012, Respondent shipped 713 gallons of liquid waste generated from pumping out and decontaminating the underground storage tank at the Facility as “Non-DOT regulated petroleum impacted liquid” on manifest number 009763538 JJK to United Oil Recovery, Inc. (“UOR”), a waste oil recycler.

20. On manifest 009763538 JJK, which was sent to UOR, an employee of Respondent signed as an “Agent for the generator,” certifying the accuracy of manifest 009763538 JJK.

21. On or about August 30, 2012, Phoenix Environmental Laboratories performed an analysis of a sample of liquid taken from the underground storage tank at the Facility via the waste dilution extraction method, and the PCB concentration of the sample was found to be 90 parts per million (“ppm”).

22. On or about August 31, 2012, Phoenix Environmental Laboratories performed an analysis of a sample of liquid taken from the underground storage tank at the Facility via the sonication extraction method, and the PCB concentration of the sample was found to be 52 ppm.

23. Upon receipt of the liquid waste oil from the underground storage tank at the Facility, manifested as 009763538 JJK, UOR sampled and analyzed the load for PCBs.

24. On or about September 4, 2012, UOR rejected the load of liquid waste oil from the underground storage tank at the Facility, manifested as 009763538 JJK, due to the presence of PCBs.

25. After UOR rejected manifest 009763538 JJK due to the presence of PCBs, Respondent remanifested the liquid waste oil from the underground storage tanks at the Facility on manifest 009763567 JJK as “Waste Polychlorinated Biphenyls Liquid.”

26. Respondent shipped manifest 009763567 JJK to Clean Harbors of Braintree, Inc., a PCB commercial storage facility.

27. On or about September 11, 2012, Clean Harbors received manifest 009763567 JJK.

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

III. Violations

COUNT I: Improper Manifesting

29. Complainant re-alleges paragraphs 1 through 28.

30. Pursuant to 40 C.F.R. § 761.207(a), a generator of PCB waste who relinquishes control of that waste by offering it for transport for off-site disposal must prepare a hazardous waste manifest on EPA Form 8700-22.

31. The PCB-contaminated liquid waste oil and wash water that Respondent sent on manifest 009763538 JJK to UOR meets the definition of “PCB waste,” as are defined in 40 C.F.R. § 761.3.

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

33. As described in Paragraph 19 above, Respondent “relinquishe[d] control” over PCB waste by shipping manifest 009763538 JJK to UOR.

34. As described in Paragraph 19 above, Respondent offered PCB waste to UOR for “disposal,” as defined in 40 C.F.R. § 761.3.

35. Accordingly, pursuant to 40 C.F.R. § 761.207(a)(1), Respondent was required to prepare a proper hazardous waste manifest for the PCB waste it shipped to UOR, including, among other things: the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

36. Respondent failed to indicate on manifest 009763538 JJK: (a) that the 713 gallons of liquid waste contained PCBs; (b) the earliest date of removal of the PCB-contaminated waste oil from service for disposal; and (c) the weight in kilograms of the PCB-contaminated waste oil.

37. Accordingly, Respondent's failure to comply with the PCB waste manifesting requirements for manifest 009763538 JJK constitutes a violation of 40 C.F.R. § 761.207(a) and Section 15 of TSCA.

IV. Proposed Civil Penalty

38. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation described above. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 and on and before January 12, 2009 are subject to penalties up to \$32,500 per day of violation. Violations that occurred after January 12, 2009 are subject to penalties up to \$37,500 per day per violation.

39. The proposed civil penalty has been determined in accordance with Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). For the purposes of determining the amount of any penalty to be assessed, the Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific references to EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy" (the "PCB Penalty Policy"), dated April 9, 1990, a copy of which is included with this Complaint. See EPA's "Notice of Availability of Polychlorinated Biphenyls Penalty Policy," 55 Fed. Reg. 13955 (April 13, 1990). A revised penalty matrix, inserted into the PCB Penalty Policy at page 9-C, takes into account inflation adjustments for

violations occurring after January 12, 2009. The PCB Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

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

41. Count I: Improper Manifesting. For non-disposal violations, the extent level of a penalty is calculated based on the cost of proper disposal of PCBs. These calculations are based on the weight in kilograms or gallons of PCBs. For a range of 220 to 1,000 gallons of PCBs, a non-disposal violation is considered to be of “Significant Extent.” For Count I, the applicable extent level is “Level B” for “Significant Extent” because a total waste load of 713 gallons of PCB liquid waste and wash water was shipped on manifest 009763538 JJK. For Count I, the applicable circumstances level is “High—Level 1” for “Major Manifesting” because manifest 009763538 JJK included major manifesting errors such as failure to identify the shipment as containing PCB-contaminated waste. The failure to properly identify PCBs in waste shipments presents a great risk of harm to human health and the environment. The shipment of PCB-contaminated waste to a facility that is not authorized to dispose of PCBs may result in the release of PCBs into the environment and/or the exposure of humans to PCBs. Once in the environment, PCBs do not readily break down and therefore may remain for long periods of time cycling

between air, water, and soil. PCBs are a probable human carcinogen and have been demonstrated to cause a variety of other adverse health effects on the immune system, reproductive system, nervous system, and endocrine system.

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

43. Based upon the violations cited in this Complaint, and taking into account the nature, extent, and circumstances of these violations, the Complainant proposes that Respondent be assessed a civil penalty in the amount of \$24,100 (\$24,080 rounded to the nearest \$100) for the violations alleged in this Complaint.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained

in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

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

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

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


VI. Informal Settlement Conference

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

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

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

5/19/14
Date


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


**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
Environmental Services, Inc.)	Docket No. TSCA-01-2014-0003
90 Brookfield Street)	CERTIFICATE OF SERVICE
South Windsor, CT 06074)	
)	
Respondent.)	
)	

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

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, Massachusetts 02109-3912
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Copy, including 40 C.F.R. Part 22 and PCB Penalty Policy (Certified Mail, Return Receipt Requested):	Dustin Mitchell, President Environmental Services, Inc. 90 Brookfield Street South Windsor, CT 06074
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Dated: <u>5-20-2014</u>	 _____ Maximilian Boal Enforcement Counsel U.S. EPA, Region I 5 Post Office Square, Suite 100 (OES04-2) Boston, Massachusetts 02109-3912
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