

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**BEFORE THE ADMINISTRATOR**

In the Matter of: )

AVCO Corporation )  
Textron Lycoming )  
550 Main Street )  
Stratford, CT 06497 )

Respondent.)

Docket No. TSCA-I-91-1080

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

This is an administrative action for the assessment of a monetary penalty, pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2615(a).

Statutory and Regulatory Basis

(1) Section 16(a) of TSCA provides for the assessment of penalties for violations of Section 15 of TSCA, 15 U.S.C. Section 2614. Section 15(c), in turn, states that it shall be unlawful for any person to fail to comply with any rule promulgated under Section 5 or 6 of TSCA, 15 U.S.C. Sections 2604 and 2605.

(2) The regulations entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions," 40 C.F.R. Part 761, were promulgated pursuant to Section 6 of TSCA.

Allegations

(3) AVCO Corporation, Textron Lycoming ("Respondent") is a Connecticut corporation which owns and manages a commercial facility ("facility") at 550 Main Street, Stratford, Connecticut.

(4) On June 5-6, 12-13, and 15, 1990, a duly designated representative of the Administrator of the Environmental Protection Agency ("EPA") inspected Respondent's facility, after presenting appropriate credentials and written notice to Respondent.

(5) At the time of the inspection, nineteen "PCB transformers," as defined at 40 C.F.R. 761.3, were in use at Respondent's facility.

Count I (Unauthorized Use)

(6) Forty C.F.R. 761.30(a)(1)(vi) requires Respondent to register its PCB transformers with the fire response personnel with primary jurisdiction. Information required to be provided includes the location of the PCB transformers, the principal constituent of the dielectric fluid in the transformers, and the name and the telephone number of the person to contact in the event of a fire involving the transformer.

(7) At the time of the inspection, Respondent had not registered its nineteen PCB transformers which were in use with the fire response personnel with primary jurisdiction, in violation of 40 C.F.R. 761.30(a)(1)(vi).

Count II (Failure to Inspect)

(8) Forty C.F.R. 761.30(a)(1)(ix) requires Respondent to visually inspect its PCB transformers in use or stored for reuse at least once every three months. The inspection may take place any time during the three month periods: January-March, April-June, July-September, and October-December as long as there is a

minimum of 30 days between inspections. The inspection must include investigation for any leak of dielectric fluid on or around the transformer. In addition, 40 C.F.R. 761.30(a)(1)(xii) requires the maintenance and availability for inspection, upon EPA's Request, of the record of inspection and maintenance history for each PCB transformer. These records must contain the following information for each PCB transformer: (a) its location; (b) the date of each visual inspection and the date that any leak was discovered, if different from the inspection date; (c) the person performing the inspection; (d) the location of any leak(s); (e) an estimate of the amount of dielectric fluid released from any leak; (f) the date of any cleanup, containment, repair, or replacement; (g) a description of any cleanup, containment, or repair performed; and, (h) the results of any containment and daily inspection required for uncorrected active leaks.

(9) At the time of the inspection, Respondent's inspection reports indicated that Respondent failed to visually inspect and thus failed to record inspection of PCB transformers, numbers C17607 and C173650, during the three month period from October to December 1987, as required by 40 C.F.R. 761.30(a)(1)(ix) and 40 C.F.R. 761.30(a)(1)(xii), respectively.

Count III (Failure to Inspect)

(10) Paragraph 8 is incorporated by reference.

(11) At the time of the inspection, Respondent's inspection reports indicated that Respondent failed to visually inspect and

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thus failed to record inspection of PCB transformers, numbers C17607 and C173650, during the three month period from January to March 1988, as required by 40 C.F.R. 761.30(a)(1)(ix) and 40 C.F.R. 761.30(a)(1)(xii), respectively.

Count IV (Failure to Inspect)

(12) Paragraph 8 is incorporated by reference.

(13) At the time of the inspection, Respondent's inspection reports indicated that Respondent failed to visually inspect and thus failed to record inspection of PCB transformers, numbers C17607 and C173650, during the three month period from July to September 1988, as required by 40 C.F.R. 761.30(a)(1)(ix) and 40 C.F.R. 761.30(a)(1)(xii), respectively.

Count V (Failure to Inspect)

(14) Paragraph 8 is incorporated by reference.

(15) At the time of the inspection, Respondent's inspection reports indicated that Respondent failed to visually inspect and thus failed to record inspection of PCB transformers, numbers C17607 and C173650, during the three month period from January to March 1989, as required by 40 C.F.R. 761.30(a)(1)(ix) and 40 C.F.R. 761.30(a)(1)(xii), respectively.

Count VI (Failure to Mark)

(16) Forty C.F.R. 761.40(j) requires Respondent to mark PCB transformer locations at the vault door, machinery room door, fence, hallway or means of access with a large PCB mark, as described at 40 C.F.R. 761.45(a), in a manner that can be easily read by emergency response personnel fighting a fire involving

the PCB transformer.

(17) At the time of the inspection, PCB transformers serial numbers C17607 and C173650 were in use at the facility in a location known as "substation 61".

(18) The PCB transformer location described in paragraph 17 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count VII (Failure to Mark)

(19) Paragraph 16 is incorporated by reference.

(20) At the time of the inspection, PCB transformer serial number B528633 was in use at the facility in a location known as "substation 43".

(21) The PCB transformer location described in paragraph 20 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count VIII (Failure to Mark)

(22) Paragraph 16 is incorporated by reference.

(23) At the time of the inspection, the means of access to PCB transformer serial number B528631 was in use at the facility in a location known as "substation 44".

(24) The PCB transformer location described in paragraph 23 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count IX (Failure to Mark)

(25) Paragraph 16 is incorporated by reference.

(26) At the time of the inspection, the means of access to

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PCB transformer serial number B528632 was in use at the facility in a location known as "substation 42".

(27) The PCB transformer location described in paragraph 26 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count X (Failure to Mark)

(28) Paragraph 16 is incorporated by reference.

(29) At the time of the inspection, the means of access to PCB transformer serial number B528630 was in use at the facility in a location known as "substation 41".

(30) The PCB transformer location described in paragraph 29 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XI (Failure to Mark)

(31) Paragraph 16 is incorporated by reference.

(32) At the time of the inspection, the means of access to PCB transformer serial number B528626 was in use at the facility in a location known as "substation 31".

(33) The PCB transformer location described in paragraph 32 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XII (Failure to Mark)

(34) Paragraph 16 is incorporated by reference.

(35) At the time of the inspection, the means of access to PCB transformer serial number B528618 was in use at the facility in a location known as "substation 30".

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(36) The PCB transformer location described in paragraph 35 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XIII (Failure to Mark)

(37) Paragraph 16 is incorporated by reference.

(38) At the time of the inspection, the means of access to PCB transformer serial number B528625 was in use at the facility in a location known as "substation 29".

(39) The PCB transformer location described in paragraph 38 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count IVX (Failure to Mark)

(40) Paragraph 16 is incorporated by reference.

(41) At the time of the inspection, the means of access to PCB transformer serial number B528627 was in use at the facility in a location known as "substation 28".

(42) The PCB transformer location described in paragraph 41 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XV (Failure to Mark)

(43) Paragraph 16 is incorporated by reference.

(44) At the time of the inspection, the means of access to PCB transformer serial number B528628 was in use at the facility in a location known as "substation 26".

(45) The PCB transformer location described in paragraph 44 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40

C.F.R. 761.40(j).

Count XVI (Failure to Mark)

(46) Paragraph 16 is incorporated by reference.

(47) At the time of the inspection, the means of access to PCB transformer serial number B528624 was in use at the facility in a location known as "substation 25".

(48) The PCB transformer location described in paragraph 47 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XVII (Failure to Mark)

(49) Paragraph 16 is incorporated by reference.

(50) At the time of the inspection, the means of access to PCB transformer serial number B528623 was in use at the facility in a location known as "substation 24".

(51) The PCB transformer location described in paragraph 50 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XVIII (Failure to Mark)

(52) Paragraph 16 is incorporated by reference.

(53) At the time of the inspection, the means of access to PCB transformer serial number B528629 was in use at the facility in a location known as "substation 23".

(54) The PCB transformer location described in paragraph 53 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).



Count IXX (Failure to Mark)

(55) Paragraph 16 is incorporated by reference.

(56) At the time of the inspection, the means of access to PCB transformer serial number B528620 was in use at the facility in a location known as "substation 22".

(57) The PCB transformer location described in paragraph 56 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XX (Failure to Mark)

(58) Paragraph 16 is incorporated by reference.

(59) At the time of the inspection, the means of access to PCB transformer serial number B528619 was in use at the facility in a location known as "substation 21".

(60) The PCB transformer location described in paragraph 59 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Count XXI (Failure to Mark)

(61) Paragraph 16 is incorporated by reference.

(62) At the time of the inspection, the means of access to PCB transformer serial number B528621 was in use at the facility in a location known as "substation 20".

(63) The PCB transformer location described in paragraph 62 was not marked with the large PCB "M<sub>1</sub>" mark, in violation of 40 C.F.R. 761.40(j).

Proposed Civil Penalty

Based on the allegations above, and taking into account the nature, circumstances, extent and gravity of these violations, and with respect to Respondent, its ability to pay, the effect the proposed penalty would have on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, the Regional Administrator of EPA Region I, the "Complainant," as defined at 40 C.F.R. 22.03, proposes to assess a civil penalty against Respondent in the amount of one hundred twenty-four thousand five hundred dollars (\$124,500) for its failure to comply with the PCB use, storage and marking requirements promulgated under TSCA. For each violation, the proposed penalty is as follows:

Count I (Unauthorized use): twenty thousand dollars  
(\$20,000);

Count II (Failure to Inspect): ten thousand dollars  
(\$10,000);

Count III (Failure to Inspect): ten thousand dollars  
(\$10,000);

Count IV (Failure to Inspect): ten thousand dollars  
(\$10,000);

Count V (Failure to Inspect): ten thousand dollars  
(\$10,000);

Count VI (Failure to Mark): twenty thousand dollars  
(\$20,000);

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Count VII (Failure to Mark): thirteen thousand dollars  
(\$13,000);

Count VIII (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count IX (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count X (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XI (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XII (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XIII (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XIV (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XV (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XVI (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XVII (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XVIII (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);

Count XIX (Failure to Mark): two thousand two hundred and  
fifty dollars (\$2,250);



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Count XX (Failure to Mark): two thousand two hundred and fifty dollars (\$2,250);

Count XXI (Failure to Mark): two thousand two hundred and fifty dollars (\$2,250);

This proposed penalty was derived pursuant to EPA's "Polychlorinated Biphenyls (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. 13,955 (April 13, 1990). In particular, using the PCB Penalty Policy, the gravity-based penalty for Count I was assessed at circumstance level 2, major extent. The gravity-based penalties for Counts II-V were assessed at circumstance level 4, major extent. Count VI was assessed at circumstance level 2, major extent. Count VII was assessed at circumstance level 2, significant extent. Counts VIII-XXI were assessed at circumstance level 5, significant extent. Moreover, Counts VIII-XXI were decreased by 25 percent for lack of culpability. After consideration of the Respondent's level of culpability, its lack of history of prior violations, and its ability to pay, the Complainant proposes no further adjustments to the gravity-based penalty amounts.

Payment may be made by cashier's or certified check, payable to the "Treasurer, United States of America," and mailed to:

EPA - Region I  
P.O. Box 360197M  
Pittsburgh, PA 15251.

**NOTICE OF OPPORTUNITY FOR 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 the issues raised in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is included with this Complaint.

A request for a hearing must be incorporated in a written answer filed with:

Regional Hearing Clerk (RCG)  
U.S. Environmental Protection Agency  
John F. Kennedy Federal Building  
Boston, Massachusetts 02203

within twenty days of receipt of this Complaint. See 40 C.F.R. 22.15 for the required contents of an answer.

Respondent's failure to file a timely answer may result in default. Instead of filing an answer requesting a hearing, you may choose to pay the proposed penalty.

**Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may confer with Marvin Rosenstein, Chief of the Pesticides and Toxic Substances Branch, or his designee, at (617) 565-3273, concerning the alleged violations or the amount of the proposed penalties. Such a conference allows Respondent to respond to the charges informally, and to provide whatever additional information may be relevant to the disposition of this matter. Where appropriate, the amount of the proposed penalties may be modified. Where the circumstances warrant, a recommendation that the charges be

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dismissed may be made to the Regional Administrator.

Your attorney is encouraged to contact William L. Parker, EPA's Assistant Regional Counsel, (617) 565-3699, for discussion of the legal matters relating to this Complaint.

Please note that a request for an informal settlement conference does not enlarge the twenty-day period within which a written answer must be submitted in order to avoid default.

Paul G. Keough, Acting

Date: 6-27-91

JULIE BELAGA  
Regional Administrator  
U.S. Environmental Protection Agency  
Region I

Certificate of Service

I certify that a copy of the above Complaint and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, were mailed by certified mail, return receipt requested, to Respondent on the date noted below.

William L. Parker

Date: 6-28-91

William L. Parker  
Assistant Regional Counsel

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