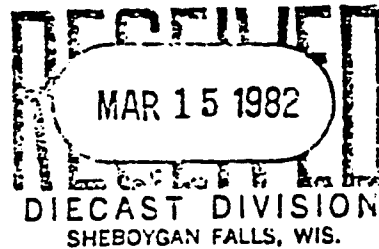


MAR 10 1982



5CE-13

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

C.T. Corporation System
Registered Agent for
Tecumseh Products Company
222 West Washington Avenue
Madison, Wisconsin 53703

TSCA-V-C054

Re: TSCA Complaint and Notice of
Opportunity for Hearing
Tecumseh Products Company
Die Cast Division
Sheboygan Falls, Wisconsin

Dear Sir:

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., discovered by United States Environmental Protection Agency (U.S. EPA) inspectors at the above-captioned facility.

It is recommended that the enclosed Complaint and Rules of Practice, 40 CFR Part 22, be carefully read and analyzed to determine the alternatives available in responding to the alleged violations, proposed penalties, and opportunity for a hearing. Please note that each day of violation cited herein constitutes a new violation for which additional penalties may be imposed.

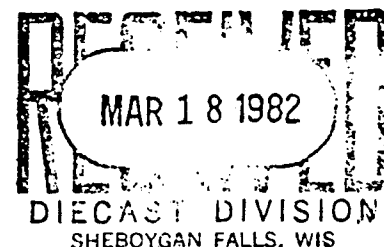
Regardless of whether you choose to request a hearing within the prescribed time limit of twenty (20) days following service of this Complaint, you are extended an opportunity to request an informal settlement conference. To request a settlement conference, please write to Mr. Michael J. Walker, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, or telephone him at (312) 353-2094.

Any discussions you may have with Mr. Walker will not affect the time period in which you are permitted to file an answer to the Complaint. Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within 20 days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint. Such failure shall result in the issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Sincerely,

Basil G. Constantelos, Director
Waste Management Division

Enclosure



cc: ✓ Ken Miller, Assistant Manager
Tecumseh Products Company

George E. Meyer
Division of Enforcement
Wisconsin Department of Natural
Resources

RECEIVED

MAR 9 1982

IN RE:

Tecumseh Products Company
Die Cast Division
a Wisconsin Corporation,

Respondent.

U.S. ENVIRONMENTAL I
PROTECTIVE AGENCY
REGION V

Regional Hearing Clerk
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

TSCA-V-C-054

I

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"), 15 U.S.C. Section 2615(a). The Complainant is the Acting Director, Waste Management Division, Region V, United States Environmental Protection Agency (hereinafter "U.S. EPA"). The Respondent is Tecumseh Products Company which is and at all times referred to in this Complaint was a corporation incorporated under the laws of the State of Wisconsin, and has maintained a place of business at 415 Cleveland Street, Sheboygan, Wisconsin.

This Complaint serves as a notice of the Director's preliminary determination that Respondent has violated Federal Regulations addressing the manufacture, use and disposal of polychlorinated biphenyls (PCBs), 40 CFR Part 761, promulgated under Section 6 of TSCA, and thereby has violated Section 15 of TSCA, 15 U.S.C. Section 2614, as follows:

COUNT I

1. At the time of the inspection on July 8, 1981, the inspectors noted that Respondent had forty-five (45) hydraulic systems in use at the facility. Mr. Miller, Assistant Manager, stated that prior to 1971 Pydrauls were used in many hydraulic systems at the plant.

MAR 18 1982
DIECAST DIVISION
SHEBOYGAN, WISCONSIN

2. Although the Wisconsin Department of Natural Resources tested three hydraulic systems in 1978, the Respondent has never tested its hydraulic units to investigate possible PCB contamination, as required by 40 C.F.R. Section 761.31(e).

3. Failure to test each hydraulic system that ever contained PCBs for the concentration of PCBs in the hydraulic fluid constitutes a violation of 40 C.F.R. 761.31(e) and 15 U.S.C. 2614(1).

COUNT II

1. At the time of the inspection on July 8, 1981 the inspectors noted that some 6,000 cubic yards of PCB-contaminated soil was stored in an enclosed building at a local landfill.

2. The soil storage building was not marked with the M_L PCB label as required by 40 C.F.R. 761.20(a)(10).

3. Failure to mark the soil storage building constitutes a violation of 40 C.F.R. 761.20(a)(10) and 15 U.S.C. 2614(1).

COUNT III

1. At the time of the inspections on July 8, 1981, the inspectors took a sample of oil/sludge concentrate, a mixture of waste oils and production cooling water which is treated by an ultrafiltration membrane system at the facility. Sample results indicated a concentration of 130ppm PCBs.

2. This oil/sludge mixture is disposed of, after ultrafiltration, in the following manner. Effluent enters the sanitary system, the Sheboygan Regional Wastewater Treatment Plant; sludge is temporarily stored at the facility until disposal at a landfill in Germantown, Wisconsin. There are no landfills in Germantown which comply with Annex II.

3. 40 C.F.R. Section 761.10(a)(3) specifies the manner in which PCBs are to be disposed of, i.e. in an incinerator which complies with Annex I, or in a chemical waste landfill which complies with Annex II.

4. Failure of the Respondent to dispose of PCB-contaminated sludge and/or wastewater effluent in a landfill which complies with Annex II, or an incinerator which complies with Annex I, constitutes a violation of 40 C.F.R. Section 761.10(a)(3), and 15 U.S.C. 2614(1).

II
Proposed Civil Penalty Assessment

Section 16 of TSCA, 15 U.S.C. Section 2615, and the regulations promulgated thereunder, 40 CFR 761 et seq., authorize a civil penalty of up to \$25,000 per day for each violation of the Act. Based on the facts given in Section I above, and the nature, circumstances, extent and gravity of the above cited violations, as well as the Respondent's ability to pay, effect on ability to continue to do business, history of prior violations and degree of culpability, the following penalties are hereby proposed for the subject violations:

Count I

Failure to test hydraulic systems
40 CFR 761.31(e)
15 U.S.C 2614(1).....\$20,000

Count II

Failure to mark PCB storage building
40 CFR 761.20(a)(10)
15 U.S.C. 2614(1).....\$15,000

Count III

Improper disposal of PCB liquids
40 CFR 761.10(a)(3)
15 U.S.C. 2614(1).....\$25,000

TOTAL PENALTY ASSESSED\$60,000

Payment of the full penalty may be made by certified or cashiers check payable to the United States of America, and remitted to:

Regional Hearing Clerk
United States Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

III
Opportunity to Request a Hearing

As provided at TSCA Section 16(a)(2)(A), and in accordance with the Administrative Procedures Act (5 U.S.C. 554), you have the right to request a hearing regarding the proposed Order, to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If you wish to avoid being found in default, you must file a request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within twenty (20) days of service of this Complaint. A written answer must be made, which answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge. The answer shall state with particularity:

1. The circumstances or arguments which are alleged to constitute the grounds of defense.
2. Each and every fact which Respondent intends to place at issue.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint constitutes admission of the undenied allegations. Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554) and the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (40 CFR Part 22), a copy of which accompanies this Complaint.

If you fail to file a written answer and request for a hearing within twenty (20) days of service of this Complaint, such failure constitutes a binding admission of all allegations made in the Complaint, and a waiver of your right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalty proposed herein shall become due and payable without further proceedings. Such Default Order is not subject to review in any court.

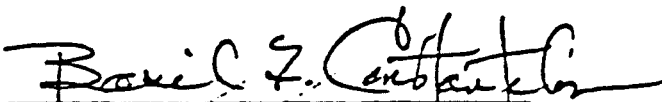
IV
SETTLEMENT CONFERENCE

Whether or not you request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, please write to Mr. Michael J. Walker, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, or call him at (312) 353-2094.

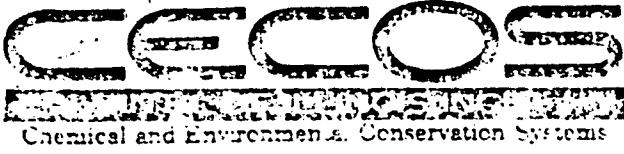
Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order by the Regional Administrator, U.S. EPA, Region V. The issuance of such Consent Agreement shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a hearing within the 20-day time period allowed by this Notice, the above penalties will be assessed without further proceedings, and you will be notified that the penalties have become due and payable. Refusal to remit any such penalty will result in the referral of this matter to the United States Attorney for collection.


Basil G. Constantelos, Director
Waste Management Division

March 5, 1982
Dated at Chicago, Illinois



Midwest Sales Office
5324 West 124th Street
Alsip, Illinois 60658
312/396-1200

March 3, 1982

Mr. Ken Miller
Tecumseh Products
Die Cast Division
Sheboygan Falls, Wisconsin 53085

Dear Mr. Miller:

Confirming our conversation of February 26th, 1982, CECOS of Illinois presents the following price for disposal of PCB soils from your plant.

<u>DESCRIPTION</u>	<u>VOLUME</u>	<u>PRICE</u>
Solid soils contaminated with PCB's greater than 50 ppm	6000 yards	\$65/ton

470 mi.

Transportation can be provided at a rate of \$1,150.00/trip with 1 1/2 free hours loading and unloading. There after detention is charged at the reate of \$43.75/hour.

CECOS can provide the manpower and equipment to load the trucks at a rate of \$74.50/hour.

These prices do not include applicable State, Local, or Federal Taxes.

These prices are firm for 30 days, but will be held for the duration of the contract.

Very truly yours,
CECOS INTERNATIONAL INC.

Peter Kinikles
Branch Manager/
SPECIAL SERVICE DIVISION

(2250 + 2250 per drum)
PCO

PK/jbh

North Shore & Central Freight
Marchell (Approx \$700 per load)

815-224-2634

in conversation
with John Plautner

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

In re Tecumseh Products Company,
Diecast Division

TSCA-V-C-054

ANSWER AND REQUEST FOR A HEARING

ANSWER

NOW COMES Tecumseh Products Company, Diecast Division ("Diecast"), by its attorneys, Foley & Lardner, and states in response to each and every one of the allegations contained in the Complaint the following:

COUNT I

1. At the time of the inspection on July 8, 1981, the inspectors noted that Respondent had forty-five (45) hydraulic systems in use at the facility. Mr. Miller, Assistant Manager, stated that prior to 1971 Pydrauls were used in many hydraulic systems at the plant.

Answer: Admits that Mr. Miller stated that prior to 1971 Pydrauls were used in the hydraulic systems at the plant and that 45 hydraulic units were currently in use. Diecast, however, affirmatively alleges that only 27 hydraulic systems were in use prior to 1971 and that it is only in these units that Pydrauls may have been used.

2. Although the Wisconsin Department of Natural Resources tested three hydraulic systems in 1978, the Respondent has never tested its hydraulic units to investigate possible PCB contamination, as required by 40 C.F.R. Section 761.31(e).

Answer: Admits that the Wisconsin Department of Natural Resources tested three of the hydraulic units in 1978 and that the remaining older hydraulic systems which may have contained Pydrauls were not tested. Diecast affirmatively alleges that the three units tested by the Wisconsin Department of Natural Resources ("DNR") showed that the concentration of PCBs in each unit was below 50 ppm. Diecast further affirmatively states that use of Pydrauls in the hydraulic units ceased in 1971. Diecast denies the remaining allegations of this paragraph.

3. Failure to test each hydraulic system that ever contained PCBs for the concentration of PCBs in the hydraulic fluid constitutes a violation of 40 C.F.R. 761.31 (e) and 15 U.S.C. 2614(1).

Answer: 40 CFR §761.31(e) and 15 USC §2416(1) speak for themselves, and to the extent the allegations differ from said regulatory and statutory sections, they are denied.

COUNT II

1. At the time of the inspection on July 8, 1981 the inspectors noted that some 6,000 cubic yards of PCB-contaminated soil was stored in an enclosed building at a local landfill.

Answer: Admits that PCB-contaminated soil was being stored in an enclosed building at a local landfill. Diecast affirmatively alleges that storage of the PCB-contaminated soil in the building was in accordance with DNR Consent Order Number 2A-79-1200 and a removal plan approved by DNR, and, on information and belief, was

acquiesced to by the United States Environmental Protection Agency ("EPA").

2. The soil storage building was not marked with the M_L PCB label as required by 40 C.F.R. 761.20 (a)(10).

Answer: Admits that the soil storage building was not marked with a PCB label, however, Diecast affirmatively alleges that the storage building was located within a restricted access area (the local landfill) and further states that the building has only one means of entry which was and is locked.

3. Failure to mark the soil storage building constitutes a violation of 40 C.F.R. 761.20(a)(10) and 15 U.S.C. 2614(1).

Answer: 40 CFR §761.20(a)(10) and 15 USC §2614 (1) speak for themselves, and to the extent the allegations in this paragraph differ from said regulatory and statutory sections, they are denied.

COUNT III

1. At the time of the inspections on July 8, 1981, the inspectors took a sample of oil/sludge concentrate, a mixture of waste oils and production cooling water which is treated by an ultrafiltration membrane system at the facility. Sample results indicated a concentration of 130ppm PCBs.

Answer: Admits that on July 8, 1981, a sample of the oil/sludge concentrate was taken. As to the alleged concentrations of PCBs in EPA's sample of the concentrate, Diecast is without information or knowledge sufficient to form a belief, and as such, the allegation is denied.

Diecast affirmatively alleges that a split sample was taken (in the presence of the EPA inspectors) on July 8, 1981, and that testing of Diecast's part of the split sample shows the concentration of PCBs in the oil/sludge concentrate to be less than one part per million.

2. This oil/sludge mixture is disposed of, after ultrafiltration, in the following manner. Effluent enters the sanitary system, the Sheboygan Regional Wastewater Treatment Plant; sludge is temporarily stored at the facility until disposed of at the landfill in Germantown, Wisconsin. There are no landfills in Germantown which comply with Annex II.

Answer: Admits the allegations contained in this paragraph.

3. 40 C.F.R. Section 761.10(a)(3) specifies the manner in which PCBs are to be disposed of, i.e. in an incinerator which complies with Annex I, or in a chemical waste landfill which complies with Annex II.

Answer: 40 CFR §761.10(a)(3) speaks for itself, and to the extent that the allegations contained in this paragraph differ from said regulatory section, they are denied.

4. Failure of the Respondent to dispose of PCB-contaminated sludge and/or wastewater effluent in a landfill which complies with Annex II, or an incinerator which complies with Annex I, constitutes a violation of 40 C.F.R. Section 761.10(a)(3), and 15 U.S.C. 2614(1).

Answer: Denies that the sludge or wastewater effluent is or was contaminated with PCBs in a concentration greater than 50 ppm and, as such, denies that any violation of 40 CFR §761.10(a)(3) and 15 USC §2614(1) occurred.

WHEREFORE, Diecast states that the proposed penalties for alleged Counts I and II are clearly excessive

given (i) the lack of any potential for harm to the public and the environment, (ii) the fact that, as to Count II, Diecast's actions were in accordance with an order of the Wisconsin Department of Natural Resources (which, under Wisconsin law, has authority to regulate PCB related matters) and a remedial action plan specifically approved by DNR and acquiesced to by EPA, (iii) the nature, circumstances, extent and gravity of the alleged violations and (iv) Diecast's ability to pay, the adverse effect of any penalty on continued business operations, the history of past violations and the lack of culpable conduct. As to Count III, Diecast states that the oil/ sludge concentrate does not contain PCBs in excess of 50 ppm, and as such, the penalty assessment for Count III is unwarranted.

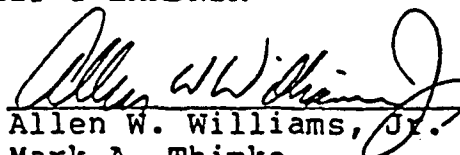
REQUEST FOR HEARING

Pursuant to 15 USC §2615(2) and the Administrative Procedures Act, Diecast requests a hearing on the matters alleged in the above-referenced complaint and on the appropriateness of the proposed penalty.

Dated this 26th day of March, 1982.

FOLEY & LARDNER

By


Allen W. Williams, Jr.
Mark A. Thimke
Attorneys for Tecumseh
Products Company, Diecast
Division

P. O. Address:
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
414-271-2400