UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

APR 2 4 2018

Mr. John Tallarico
Bethlehem Earth, L.P.
491 Old York Road
Jenkintown, PA 19046

Re: Notice of Noncompliance
Docket Number: 03-18-0026

Dear Mr. Tallarico:

This is a Notice of Noncompliance (Notice) and information request issued by the United States Environmental Protection Agency (EPA) for violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. '2601 *et seq*. This serves as EPA's preliminary determination that you have violated the federal regulations concerning polychlorinated biphenyls ("PCBs") promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. ' 2605(e), and set forth at 40 C.F.R. Part 761, and that you have thereby violated Section 15 of TSCA, 15 U.S.C. ' 2614.

Based on the information obtained, EPA Region III has determined that Bethlehem Earth, L.P., has violated the requirements of the Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, 40 C.F.R. Part 761 (the PCB Regulations), as described more fully below.

Specifically, on three different occasions occurring from September 2017 through January 2018, Bethlehem Earth L.P., accepted PCB-containing soils to be utilized as clean fill and/or beneficial-use construction material at your Easton Road Site in Bethlehem, PA and Freemansburg Avenue site in Freemansburg, PA. Pertinent information regarding each shipment is included in the table below. The shipments of soil originated in New York and New Jersey and have PCB concentrations ranging from 2.56 parts per million (ppm) to 18.3 ppm. The Pennsylvania Department of Environmental Protection (PADEP) notified EPA via e-mail of each of these shipments. The PCB-containing soil in each of the three shipments had PCB concentrations equal to or greater than 2 ppm. The Toxic Substances and Control Act, 15 U.S.C. Section 2605(e), and EPA implementing regulations at 40 C.F.R. Part 761 impose limitations on and requirements for the use of PCB-containing materials. Further, the use of PCB-containing materials in a manner that is not permitted under TSCA or its implementing regulations is a violation of federal law. In accordance with 40 C.F.R. §761.20(a), no persons may use any PCB, or any PCB item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under Section 761.30. EPA considers the use of PCB-containing materials at or above 2 ppm but which are not authorized, exempted, or excluded by the PCB regulations at 40 C.F.R. Part 761 to be prohibited under those regulations.

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*Customer Service Hotline: 1-800-438-2474*

| Application Number | Generator Name and Address | Beneficial Use (BU) or Clean Fill (CF) | Site receiving PCB Waste | Highest PCB Concentration | Date of PADEP Email Notifying EPA |
|---|---|---|---|---|---|
| New Source #2635 | DRP Gibbstown Logistics, Gibbstown, NJ | BU | Bethlehem Earth Easton Road Site, Bethlehem, PA | 18.3 ppm | 1/3/18 |
| New Source #2617 | PANYNJ/ Greenville Yard, 20 Colony Road, Jersey City, NJ | BU | Bethlehem Earth Easton Road Site, Bethlehem, PA | 4.7 ppm | 12/14/17 |
| FP-001 #2490 | KLS Lodi Lodi CVS/LA Fitness Redevelopment Lodi, NY | CF | Barnsdale Associates 1600 Freemansburg Ave Freemansburg, PA 18020 | 2.56 ppm | 9/18/17 |

**Unauthorized Use**

Pursuant to the Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items requirements of the PCB Regulations, 40 C.F.R. § 761.20, "No persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30,…". The use of PCB-containing materials is banned under TSCA 6(e) unless authorized by EPA. EPA's use authorizations for PCBs and PCB-containing materials in 40 C.F.R. § 761.30 do not provide for the use of PCB-containing materials as fill or construction materials. Although 40 C.F.R. § 761.30(u) provides for the use of decontaminated PCB-containing materials, such materials must be decontaminated or meet applicable decontamination standards in 40 C.F.R. § 761.79 prior to use. Therefore, Bethlehem Earth, L.P., has violated the Use Authorizations regulations three times, from September 2017 through January 2018, by utilizing PCB-containing soils with PCB concentrations equal to or greater than 2 ppm for use as construction material and clean fill at your site in Bethlehem, PA.

To determine the potential impact to human health and the environment resulting from the use of PCB-contaminated soil as construction material at your site, EPA is requesting the following information:

1. Provide copies of each New Source application submitted to the Pennsylvania Department of Environmental Protection (PADEP) as required under your Beneficial use Permit WMGR096NE004 which included PCB-containing materials with PCB concentrations of 2 ppm

or greater. Provide the dates that you or the Bethlehem Earth Easton Road site accepted these PCB-containing materials.

2. Provide copies of each FP-001 application submitted to the PADEP as required under the PADEP Clean Fill Policy which included PCB-containing materials with PCB concentrations of 2 ppm or greater. Provide the dates that you or the Bethlehem Earth Easton Road or the Barnsdale Associates Freemansburg sites accepted these PCB-containing materials.

3. Provide the total amount of PCB-containing material with PCB concentrations of 2 ppm or greater that has been placed at the Bethlehem Earth Easton Road site in Bethlehem, PA.

4. Provide a site map or schematic that describes and specifies the location, including lat/long coordinates of each cell or other specified unit, where PCB-containing material with PCB concentrations of 2 ppm or greater has been used as either construction material under PA Beneficial Use Permit WMGR096NE004 or as clean fill under the PADEP Clean Fill Policy. Include information related to the depth of this material if it has been buried, including a description of the overburden or cap material.

5. Describe the intended future use of the property where PCB-containing material with PCB concentrations of 2 ppm or greater has been placed and the anticipated timeline for that intended future use. Include any information related to potential sale, transfer, or other conveyance of the property.

6. Provide any documentation related to deed notices, deed restrictions, land-use covenants, and any other institutional controls as they relate to locations where PCB-containing materials with PCB concentrations of 2 ppm or greater were placed.

This collection of information is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 - 3520.

Providing false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

The violations identified in this Notice are prohibited by Section 15(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. ' 2614(1).

Section 16 of TSCA authorizes the assessment of a civil penalty of up to $25,000 per day for each violation of TSCA and the regulations promulgated thereunder. Pursuant to the Debt Collection Improvement Act of 1996 and the Adjustment of Civil Monetary Penalties for Inflation promulgated thereunder and published at 40 C.F.R. Part 19, the maximum penalty for each violation of TSCA has been increased to $27,500 per day for each violation occurring after January 30, 1997 (see 61 Federal Register 69360 (December 31, 1996)(codified at 40 C.F.R Part 19)), to $32,500 for each violation occurring after March 15, 2004 (see 69 Federal Register 7121 (February 13, 2004)( codified at 40 C.F.R. Part 19)), and to $37,500 for violations occurring after January 12, 2009 (see Federal register 75341 (December 11, 2008)(codified at 40 C.F.R. Part 19)). The PCB Penalty Policy can be viewed at:

https://www.epa.gov/enforcement/polychlorinated-biphenyls-pcb-penalty-policy

Based on the information currently available, EPA is issuing this Notice and information request in lieu of an administrative complaint proposing a civil penalty. Within thirty (30) days of receipt of this Notice and information request, you must respond to the questions presented in this Notice and you must certify by written statement that your facility at Easton Road in Bethlehem, PA will no longer accept PCB-containing materials that contain PCBs at concentrations of 2 ppm or greater.

If you fail to respond to this Notice and information request within the designated time, EPA may issue an administrative complaint for the assessment of civil penalties for the violations described above. This Notice does not preclude future enforcement actions for the violations cited herein, or for any other violations of statutes and regulations that EPA administers.

Please submit your written statement and response to questions within 30 days of receipt of this Notice to:

Mr. Scott Rice
Toxics Programs Branch (3LC41)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Pursuant to the regulations appearing at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of the submitted information. Unless such a confidentiality claim is asserted at the time the required information is submitted, EPA may make this information available to the public without further notice to you. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above-cited regulations. Any such claim for confidentiality must conform to the requirements set forth in 40 C.F.R. ' 2.203(b).

If any portion of your response(s) to this action contains information which you claim as business confidential, you should submit that portion of the response in accordance with the following procedures. The material itself should be marked to indicate that it is claimed confidential. It should be placed in an envelope addressed to the EPA representative identified at the end of this action. The envelope should be marked "Confidential Business Information - To be Opened By Addressee Only". The envelope should then be placed in a second, outer envelope addressed to:

Mr. Kyle Chelius
Document Control Officer (3LC41)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

The package containing the confidential business information portion of your response should then be mailed, by registered mail, to Kyle Chelius, the Document Control Officer.

If you have any questions, please contact Scott Rice at 304 231 0501 or at rice.scott@epa.gov.

Sincerely,

Harry T. Daw
Associate Division Director
Land and Chemicals Division
Office of Toxics and Pesticides

cc:

Walt Harner, Director
Bureau of Waste Management
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
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Harrisburg, PA 17101-8471
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