

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 25 11 54 43

Docket No. TSCA-08-2007-0006

IN THE MATTER OF:)

Flathead Electric Cooperative, Inc.)

Respondent.)

COMPLAINT AND NOTICE OF OPPORTUNITY
FOR HEARING

COMPLAINT

1. This is a civil administrative action commenced and concluded under the authority granted to the Administrator of the United States Environmental Protection Agency (EPA) by section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615, as properly delegated to the undersigned EPA officials. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules of Practice)," 40 C.F.R. part 22. 40 C.F.R. § 22.13(b). These general allegations apply to each count below.

2. Respondent is Flathead Electric Cooperative, Inc., a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.

3. Respondent was, at all times relevant to this action, the owner and operator of a facility at 2510 Highway 2 East, Kalispell, Montana.

4. On or about September 20, 2006, Kim P. Le, an authorized EPA inspector, conducted an inspection of Respondent's facility, with the consent of Respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of Respondent. Factual allegations are as of that day.

5. The PCB regulations require that PCBs must be disposed of within one year of their removal from service. 40 C.F.R. §761.65 (a)(1).

6. Respondent's records confirm that a drum of PCB waste, ID number 26-02, with a PCB concentration of 2730 parts per million, was removed from service October 17, 2002 and disposed of October 24, 2003.

7. Respondent's failure to dispose of drum 26-02 within one year of removal from service, as required by 40 C.F.R. § 761.65 (a)(1), constitutes a violation of section 15 of TSCA, 15 U.S.C. § 2614.

NOTICE OF OPPORTUNITY FOR A HEARING

8. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

9. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street, Denver, CO 80202) within 30 days of receiving this Complaint, and provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

10. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including how extensions of time to pay can be obtained.

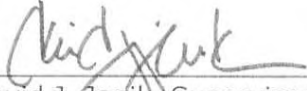
SETTLEMENT NEGOTIATIONS

11. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact the attorney listed below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for either paying the penalty or filing an answer and requesting a hearing.**

12. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, as amended, authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of TSCA. In arriving at the amount of the penalty, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the nature, circumstances, extent, and gravity of the violation, and, with respect to Respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require. Based on the nature of these specific violations, including the actual or potential introduction of PCBs to the environment and/or exposure to humans, EPA proposes a civil penalty of \$1,500 for this violation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance, and
Environmental Justice,
Complainant.

Date: SEP 21 2007

By: 
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program (ENF-L)
1595 Wynkoop
Denver, CO 80202
303.312.6917
janik.david@epa.gov

Date: 9/24/07

By: 
Martin Hestmark, Director
Technical Enforcement Program

IN THE MATTER OF:
DOCKET NUMBER:

FLATHEAD ELECTRIC COOPERATIVE, INC.
TSCA-08-2007-0006

CERTIFICATE OF SERVICE

I hereby certify that the original and a true copy of this COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, with Exhibits for the docket numbers indicated above was hand-delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street Denver, Colorado 80202-1129.

And that a true copy of the same was sent by certified mail return receipt requested to:

Kenneth A. Sugden
Registered Agent for
Flathead Electric Cooperative, Inc.
2510 U.S. Hwy 2 East
Kalispell, Montana 59901

9/25/07
Date

Judith M. McTernan
Judith M. McTernan