



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>

2008

DOCKET NO.: TSCA-08-2007-0016

IN THE MATTER OF:)	
)	
CITY OF FLANDREAU)	FINAL ORDER
1005 W. Elm Avenue)	
Flandreau, SD 57028-0343)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF March, 2008.


 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. TSCA-08-2007-0016

IN THE MATTER OF:)	
)	
City of Flandreau)	CONSENT AGREEMENT
1005 W. Elm Avenue)	
Flandreau, SD 57028-0343)	
)	
Respondent.)	
)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and the City of Flandreau, South Dakota (Respondent or City), by their undersigned representatives, hereby consent and agree as follows:

INTRODUCTORY TERMS

1. On September 28, 2007, Complainant issued a Complaint to Respondent alleging certain violations of section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615. The Complaint proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits or denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

5. Pursuant to section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615, the nature of the violations, Respondent's agreement to take the measures listed below to come into compliance with the requirements of TSCA, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that

an appropriate civil penalty to settle this action is Two Thousand Eight Hundred and Seventy-five Dollars (\$2875).

6. Respondent consents, for the purpose of settlement, to the issuance of a final consent order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph. Respondent further consents, for the purpose of settlement, to the performance of the SEP described below and to pay the civil penalty as follows:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," or be paid by one of the other methods listed below, and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Kim Le
Environmental Engineer
Technical Enforcement Program (8ENF-AT)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 60 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondent.

7. Respondent agrees to construct a storage facility that will be used to store PCBs, PCB Transformers, PCB Items, PCB Contaminated Electrical Equipment, all as defined by the TSCA regulations, and/or other hazardous wastes and materials as may be generated by the City in the future. The final constructed storage facility shall at least meet the storage requirements of 40 C.F.R. §761.65(b) and the marking requirements of 40 C.F.R. §761.40(a)(10), but shall be constructed to meet the storage requirements of any materials to be stored therein and to prevent the possible release of such materials into the environment. The City shall complete construction of this storage facility no later than November 1, 2008 and shall submit a final accounting of the construction costs, as well as, photos of the completed storage facility to EPA within 30 days of construction completion. The City has represented to EPA that the construction costs for this storage facility will be approximately Twelve Thousand Dollars (\$12,000).

8. Respondent further agrees to implement a PCB Inspection and Recordkeeping program for the City that minimally meets the requirements of 40 C.F.R. §761.65(c)(5) and §761.180(a). This program will designate individuals, and positions, responsible for performing the tasks set forth therein. A draft of the PCB Inspection and Recordkeeping program will be sent to Kim Le at EPA, at the address listed herein, within 45 days of the final order issued in this matter. The final PCB Inspection and Recordkeeping program will be implemented by Respondent within 90 days of receiving any comments from EPA on the draft program.

Supplemental Environmental Project

- 9. Description of the SEP
 - a. Respondent shall perform a SEP that involves further enhancing a City Oxbow wetland preservation and protection project. The SEP shall include the planting of native trees, grasses, shrubs, stream bank stabilization, trail construction and educational displays.
 - b. Respondent shall complete the work on the SEP no later than November 1, 2008 unless the parties agree in writing to an extension of the completion date.

10. The total expenditure for the SEP shall be not less than Ten Thousand Five Hundred Dollars (\$10,500). Expenditures on the SEP shall be in approximately the following cost distribution: 40% for the stream bank stabilization and planting; 40% for the trail construction;

and, 20% for the educational displays. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

11. Respondent hereby certifies that, as of the date of this Consent Agreement, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

12. SEP Reports

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the final SEP. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented, along with representative photographs;
 - (ii) A description of any operating, implementing or performance problems encountered and the solutions thereto;
 - (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
 - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
- b. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

13. Respondent agrees that EPA may inspect the location where the SEP is being performed at any time in order to confirm that the SEP is being constructed and/or implemented, consistent with the representations made herein.

14. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement, and shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

15. EPA acceptance of SEP Reports.
 - a. Following receipt of the SEP Completion Report described above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.
 - b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement.

16. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

17. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

Kim Le
Environmental Engineer
Technical Enforcement Program (8ENF-AT)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Stipulated Penalties and Late Fees

18. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of Ten Thousand Five Hundred Dollars (\$10,500.00).
- b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Ten Thousand Five Hundred Dollars (\$10,500), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
- c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

19. Stipulated penalties for subparagraph 18(c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

20. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the paragraph 6.

GENERAL PROVISIONS

21. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.

22. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

23. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

24. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent.

25. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

26. Each party shall bear its own costs and attorney fees in connection with this matter.

27. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 3/18/08

By: Cynthia J. Reynolds
Cynthia J. Reynolds, Director
Technical Enforcement Program

Date: 3/20/08

By: Matt Cohn
Matt Cohn, Supervisory Attorney
Legal Enforcement Program

Date: March 15, 2008

By:



Richard H. Baird
Senior Enforcement Attorney,
US Environmental Protection Agency.
Region 8, MC 8ENF-L
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone No.: (303) 312-6642
FAX No.: (303) 312-7202

City of Flandreau, South Dakota

Date: 3-5-08

By:



Its:



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **CITY OF FLANDREAU; DOCKET NO.: TSCA-080-2007-0016**; the **CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on March 21, 2008, and the **FINAL ORDER** was filed on March 27, 2008.

Further, the undersigned certifies that a true and correct copies of the documents were delivered to Richard H. Baird, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on March 27, 2008, to:

William J. Ellingson, Esq.
James A. Billion, Esq.
Ellingson Law Firm
211 N. Wind Street
P. O. Box 324
Flandreau, SD 57028-0324

E-mailed to:

Honorable Spencer T. Nissen
Office of Administrative Law Judges (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 27, 2008



Tina Artemis

Paralegal/Regional Hearing Clerk

