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2007 OCT 30 AM 8:51

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October 26, 2007

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

IN RE: Answer and Request for Hearing Regarding Complaint and Notice of  
Opportunity for Hearing Docket No. TSCA-08-2007-0013

Dear Sir or Madam:

Enclosed you will find original and copy of Answer and Request for Hearing to the above  
Complaint and Notice of Opportunity for Hearing

If you have any questions upon receipt, please contact the undersigned as counsel for  
Respondent.

Sincerely yours,

SKAVDAHL & EDMUND

BY: 

JHS/jk  
Enclosure

Certified Mail #7006 0100 0007 2048 0917

cc: Sheldon Albertson  
Jessie Goldfarb - Certified Mail #7006 0100 0007 2048 0924  
Martin Hestmark - Certified Mail #7006 0100 0007 2048 0931  
David J. Janik - Certified Mail #7006 0100 0007 2048 0948

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2007 OCT 30 AM 10:51  
REGION 8  
DOCKET NO. TSCA-08-2007-0013

EPA REGION VIII  
READING ROOM

IN THE MATTER OF: )  
)  
NIOBRARA ELECTRIC ASSOCIATION, ) COMPLAINT AND NOTICE OF  
INC. ) OPPORTUNITY FOR HEARING  
3951 U.S. Hwy. 20 )  
Lusk, WY 82225 )  
)  
Respondent. )

**ANSWER**

Respondent, Niobrara Electric Association, Inc. hereby answers the Complaint of the Environmental Protection Agency, Region 8 ("EPA"), as follows:

**ANSWER TO GENERAL ALLEGATIONS**

1. Respondent admits the allegations of Paragraph 1 of the EPA's Complaint.
2. Respondent admits the allegations of Paragraph 2, of the EPA's Complaint.
3. Respondent admits the allegations of Paragraph 3 of the EPA's Complaint.
4. Respondent admits the allegations of Paragraph 4, of the EPA's Complaint.
5. Respondent admits the allegations of Paragraph 5 of the EPA's Complaint.
6. Respondent admits the allegations of Paragraph 6, of the EPA's Complaint.
7. Respondent admits the allegations of Paragraph 7 of the EPA's Complaint in so

far as that the inspector issued notice of inspection of confidentiality to Mr. Bridge, but denies that the notices of inspection and confidentiality were delivered to him at the beginning of the inspection and affirmatively states that the same were presented and signed by him after the inspection. Mr. Bridge admits that he accompanied the inspector during the inspection.

8. Respondent admits the allegations of Paragraph 8 of the EPA's Complaint.

9. Respondent does not have sufficient information to admit or deny said allegations since the documentation alleged was not attached to the Complaint and therefore Respondent denies the allegations of Paragraph 9.

10. Respondent denies Paragraph 10, as an admission by Mr. Bridge. Mr. Bridge did admit to the inspector that to his knowledge since he became Line Superintendent for Respondent in June of 2004 that Respondent had not registered with the EPA electric generation PCB transformer bearing serial number F560921-66P but he did not know if the previous Line Superintendent had complied with applicable CFR's prior to June, 2004.

11. Respondent denies that the transformer in question (General Electric Serial Number F560921-66P) was in use at Respondent's facility from July 23, 2002 to June 19, 2003 and was disposed of on March 19, 2004.

12. Respondent denies the allegations of Paragraph 12 of the EPA's Complaint. Respondent does admit that PCB regulations require PCB Transformers having more than 500 ppm be registered with the EPA's National Programs Chemical Division Office of Pollution Prevention and Toxic and that records of inspections must be maintained at least three years after disposal of a transformer, but denies that it was required to inspect said transformer for leaks at least once every three months. PCB regulations provide that a reduced visual inspection frequency of at least once every twelve months applies to transformers, such as this transformer that contains less than 60,000 ppm PCBs (40 CFR § 761.30 (xiii)(B) ("a reduced visual inspection frequency of at least once every twelve months applies to PCB transformers that utilize either the following risk reduction measures (B) a PCB transformer which has been tested and found it contains less than 60,000 ppm PCBs").

13. Respondent admits the allegations of Paragraph 13 of the EPA's Complaint.
14. Respondent denies Paragraph 14 as to the allegation that the 6 PCB articles referred to in Paragraph 13 above were on grass. Said articles were stored on a concrete slab.
15. Respondent admits the allegations of Paragraph 15 of the EPA's Complaint.
16. Respondent denies the allegations of Paragraph 16 of the EPA's Complaint.
17. Respondent denies the allegations of Paragraph 17 of the EPA's Complaint.
18. Respondent denies the allegations of Paragraph 18 of the EPA's Complaint. Mr. Bridge believed that since the six transformers identified in Paragraph 13 of the Complaint were less than 500 ppm PCB's, there were no storage limitations under 40 C.F.R. §761.35.
19. Respondent denies the allegations of Paragraph 19 of the EPA's Complaint.
20. Respondent denies the allegations of Paragraph 20 of the EPA's Complaint.

### **CONCLUSION**

During and after the inspection, Respondent made every effort to cooperate fully and in a timely fashion with the inspector, Ms. Le. Within days following her inspection of Respondent's property, Ms. Le received the information she requested. The stored transformers Ms. Le alleged to have been stored on grass were not stored on grass, but instead on a concrete pad.

Furthermore, the six transformers identified in Paragraph 13 of the Complaint were not stored for disposal, they were stored for re-use. All six transformers contained less than 500 ppm PCB's, therefore, were not PCB transformers under the definition stated in 40 C.F.R. §761.3 since the six transformers were not stored for disposal and were not PCB transformers it is questionable as to whether they were required to be stored in a facility described in C.F.R. §761.65(b).

At all times during the inspection and following up with Mr. Albertson after the inspection, Ms. Le assured Respondent that there was no problem and to just follow up on the paperwork. After sending the requested information, Respondent was surprised with \$38,000.00 in fines including \$9,000.00 stemming from three inappropriate counts of failure to quarterly inspect, which Respondent was never required by PCB regulations to do. Respondent further states that if it is determined that it failed to properly register GE PCB transformer serial number F560921-66P pursuant to 40 C.F.R. §761.30 (a)(1)(vi) (A), then it could not be guilty of violation of 40 C.F.R. §761.30 (a)(1)(xii) (I) because there would be no records to keep and maintain for a period of three years.

In view of all the foregoing, Respondent respectfully requests that Counts 1 through 6 be repealed. Respondent further requests that if Count 1 is not repealed. In the alternative, that the EPA consider the circumstances surrounding Respondent's failure to register and the fact removal occurred less than nineteen (19) months after testing determined it constituted a PCB transformer under 40 C.F.R. §761.3 and Ms. Le's assurances that there was no problem in order to reduce the penalty imposed for Count 1.

### **REQUEST FOR HEARING**

Respondent hereby requests a hearing upon the issues raised by the Complaint and this Answer.

DATED this 26<sup>th</sup> day of October, 2007.

  
John H. Skavdahl  
Skavdahl & Edmund  
P. O. Box 156  
Harrison, NE 69346  
Telephone: 308-668-2466  
Facsimile: 308-668-2467  
Attorney for Respondent

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer to the EPA's Complaint and Notice of Opportunity for Hearing was served as follows:

The original and one copy was sent via certified mail, return receipt requested, postage prepaid, to:

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

A copy was sent via certified mail, return receipt requested, postage prepaid, to:

Jessie Goldfarb (8ENF-L)  
Senior Enforcement Attorney  
U.S. EPA - Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

A copy was sent via certified mail, return receipt requested, postage prepaid, to:

Martin Hestmark, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA - Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

A copy was sent via certified mail, return receipt requested, postage prepaid, to:

David J. Janik  
Supervisory Enforcement Attorney  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA - Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Dated this 26<sup>th</sup> day of October, 2007.

  
John H. Skavdahl