



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2014 JUL 29 PM 2:18

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED  
REGION VIII  
CLERK

DOCKET NO.: RCRA-08-2014-0003

IN THE MATTER OF:

WESTINGHOUSE ELECTRIC CO. LLC.

FINAL ORDER

Ogden, Utah

Respondent

Pursuant to 40 C.F.R. §22.13(b) and 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 29th Day of July, 2014

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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REGION 8

REGION VIII  
HEARING CLERK

IN THE MATTER OF:

Westinghouse Electric Company LLC  
Ogden, Utah

Respondent.

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Docket No. RCRA-08-2014-0003

COMBINED COMPLAINT AND  
CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency Region 8 (EPA or Complainant), and Respondent, Westinghouse Electric Company LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows.

I. PRELIMINARY STATEMENT

- 1) This administrative enforcement proceeding is governed by 40 C.F.R. Part 22.
- 2) This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
- 3) EPA has jurisdiction over this matter pursuant to sections 3008(a) and 3008(g) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act (Act or RCRA), 42 U.S.C. §§ 6928(a) and 6928(g).
- 4) For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations or legal conclusions contained herein.

- 5) Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement in any proceeding to enforce this Consent Agreement.
- 6) Complainant has concluded that settlement of this matter is in the public interest.
- 7) Complainant and Respondent agree that entry of this Consent Agreement and its incorporation into a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.
- 8) Upon incorporation into a final order by the EPA Regional Judicial Officer (Final Order), this Consent Agreement applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Any change in ownership of, or corporate organization, structure or status of Respondent as such change may relate to Respondent's ownership or operation of the Facility (as defined below), shall not alter Respondent's responsibilities under this Consent Agreement, unless EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.
- 9) Respondent shall notify EPA at the address specified below thirty (30) days prior to any transfer described in or contemplated under the paragraph immediately above.
- 10) This Consent Agreement contains all civil penalty and compliance settlement terms agreed to by the parties.

## **II. EPA'S GENERAL ALLEGATIONS**

- 11) Respondent Westinghouse Electric Company LLC is a limited liability company organized under the laws of the State of Delaware and authorized to do business in Utah.
- 12) The State of Utah has received authorization from EPA to implement the federal hazardous waste program in the State, pursuant to section 3006 of RCRA, 42 U.S.C. § 6926.

- 13) The federal hazardous waste program in the State of Utah is found in, *inter alia*, RCRA, the Utah Solid and Hazardous Waste Act, Utah Code § 19-6-101 *et seq.*, the rules and regulations of the State of Utah implementing the Utah Solid and Hazardous Waste Act (found in rule 315 (R315) of the Utah Administrative Code (Utah Admin. Code)) authorized by EPA, and in regulations promulgated by EPA pursuant to the Hazardous and Solid Waste Amendments of 1984 (further amending RCRA), Pub.L. 98-616, Nov. 8, 1984, for which the State has not received authorization. Citations herein, therefore, are to the Utah Admin. Code and are followed by the federal analog in the Code of Federal Regulations (C.F.R.) in parenthesis, except where EPA is directly implementing a provision of RCRA or the C.F.R.
- 14) Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the State of Utah that it is issuing this combined complaint and consent agreement.
- 15) Respondent is a "person" as defined at section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10. Utah has incorporated this definition by reference at Utah Admin. Code R315-1-1(b).
- 16) Respondent owns and operates a facility at or about 10000 W 900 S, Ogden, Utah (Facility), to recover zirconium and hafnium from zirconium oxide crystals. The Facility is a "facility" as defined at 40 C.F.R. § 260.10. Utah has incorporated this definition by reference at Utah Admin. Code R315-1-1(b).
- 17) Magnesium chloride produced during zirconium and hafnium production at the Facility currently is sold as a useful product.
- 18) From approximately March 2009, until approximately November 2010, some magnesium chloride produced at the Facility was shipped away from the Facility for disposal.

- 19) The magnesium chloride shipped for disposal is a solid waste as defined at Utah Admin. Code R315-2-2(a)(1) (40 C.F.R. § 261.2(a)(1)).
- 20) Waste magnesium chloride generated by Respondent is a reactive hazardous waste as defined at Utah Admin. Code R315-2-9(f) (40 C.F.R. § 261.23).
- 21) Respondent was required to determine whether the waste magnesium chloride was a hazardous waste pursuant to Utah Admin. Code R315-5-1.11 (40 C.F.R. § 262.11).
- 22) From approximately March 2009, until approximately November 2010, Respondent was a generator of hazardous waste as defined at Utah Admin. Code R315-1-1(b) (40 C.F.R. § 260.10).
- 23) Generators shipping hazardous waste offsite must, among other things, properly prepare, execute, and use, a manifest on EPA form 8700-22, and if necessary, EPA form 8700-22A, for each shipment of hazardous waste. Utah Admin. Code R315-5-2.20 (40 C.F.R. § 262.20).

### **III. DESCRIPTION OF VIOLATIONS**

- 24) On at least seventy two (72) separate dates between March 2009 and November 2010, Respondent shipped reactive hazardous waste magnesium chloride for disposal.
- 25) Respondent did not prepare, sign, or use, a hazardous waste manifest for any shipments of hazardous waste Respondent initiated between March 2009 and November 2010.
- 26) Respondent's failures to complete, sign and use hazardous waste manifests for the shipments of hazardous waste described above constitute seventy two violations of RCRA.

#### IV. COMPLIANCE ORDER

- 27) Respondent has submitted a magnesium chloride management plan for the Facility containing the following (the plan is attached hereto as Attachment 1):
- a) a description of each point or location at which magnesium chloride is generated;
  - b) a description of Respondent's method(s) for determining whether and when magnesium chloride generated and stored at the Facility is a valuable by-product or a solid waste;
  - c) a detailed description of the management practices, including methods and locations, presently employed or expected to be employed for the magnesium chloride generated and managed at the Facility including:
    - i) how magnesium chloride is transported within Facility boundaries;
    - ii) how equipment used to manage magnesium chloride is cleaned and how waste from cleaning is managed;
    - iii) magnesium chloride storage areas or locations, including a map;
    - iv) a description of storage area(s), including containment and secondary containment strategies, if any, and a description of each type of storage vessel (i.e. containers or tanks);
    - v) a description of storage area and container inspection methods, including schedules, checklists of items inspected, and methods of documentation;
    - vi) a description of anticipated actions addressing potential or actual releases; and
    - vii) other relevant magnesium chloride management practices;
  - d) a description of how magnesium chloride is addressed in the Facility's contingency plan;  
and
  - e) a list of at least one treatment, storage and disposal facility (TSD) capable of treating the magnesium chloride to meet the land disposal restrictions (LDRs) when it is managed as waste (including the name, location, address and telephone number of each facility, as well as the method(s) that would be used to meet the LDRs at each facility).
- 28) Within ninety (90) days of receipt of the Final Order in this matter Respondent shall:
- a) implement the magnesium chloride management plan and report to EPA on the status of

implementation (if Respondent reports that it is not fully implementing the Plan at that time Respondent shall report to EPA every thirty (30) days thereafter until it reports that it is fully implementing the Plan, or until EPA relaxes or terminates this continuing reporting requirement at the request of Respondent and Respondent having shown good cause);

- b) report to EPA on whether Respondent has been successful in identifying a second TSD facility capable of treating the magnesium chloride to meet LDRs when it is managed as waste and, if successful, update the plan accordingly; and
- c) report to EPA on whether Respondent has found a customer for Grade B material as a product and, if successful, update the plan accordingly.

#### **V. CIVIL PENALTY**

29) Pursuant to sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), EPA has determined that a civil penalty of one hundred and eleven thousand dollars (\$111,000.00) is appropriate to settle this matter.

30) Respondent consents and agrees to pay a civil penalty in the amount of one hundred and eleven thousand dollars (\$111,000.00) in the manner described below.

31) Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of Respondent's receipt of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Time to be considered received that day.

32) Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall

designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

**If sent by regular U.S. mail:**

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**If sent by any overnight commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**If sent by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

**Automated Clearing House (ACH) for receiving US currency:**

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)  
800-234-5681



**On-line Debit and Credit Card payment:** There is now an On-Line Payment Option available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV [Enter sfo 1.1 in the search field. Open form and complete required fields.]

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

David Duster  
RCRA CERCLA Enforcement Unit  
Technical Enforcement Program (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

and

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

33) 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 (on the 1<sup>st</sup> late day, 30 days of interest will have accrued), 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.

34) In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed the 31<sup>st</sup> day from the due date of any payment, and for 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. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

35) Respondent agrees that the penalty never shall be claimed as a federal or other tax deduction or credit.

## **VI. OTHER TERMS AND CONDITIONS**

36) Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of this Consent Agreement and may result in the initiation of an administrative enforcement action, or referral of the matter to the U.S. Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

37) Nothing in this Consent Agreement shall be construed as a waiver by Complainant 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.

38) Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

39) This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement.

40) This Consent Agreement resolves Respondent's liability for Federal civil penalties and injunctive relief under sections 3008(a) and (g) of the Act, 42 U.S.C. §§ 3008(a) and (g), for the violations alleged in this Consent Agreement.

41) Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Consent Agreement.

42) Respondent may request in writing that EPA terminate this Consent Agreement at any time beginning three years after the date of the Final Order in this matter. EPA may terminate this Consent Agreement at its sole discretion depending on the totality of the circumstances at that time. EPA's agreement to terminate this Consent Agreement shall not be unreasonably withheld.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
Complainant.

Date: 07/23/2014

Eddie A. Sierra

Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

WESTINGHOUSE ELECTRIC COMPANY  
LLC,  
Respondent.

Date: July, 21, 2014

D. J. Colburn

Name:  
Title:

David J. Colburn  
Plant Manager, Westinghouse, Ogden

## Artemis, Tina

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**From:** Figur, Charles  
**Sent:** Tuesday, July 29, 2014 11:56 AM  
**To:** Artemis, Tina  
**Cc:** M. Lindsay Ford; Eppers, Jim; Bearley, Mia  
**Subject:** Westinghouse Combined Complaint and Consent Agreement

Dear Ms. Artemis –

This email is written in response to your request on behalf of the Regional Judicial Officer (RJO) for a copy of any tolling agreement that may have been agreed to by the parties in the Westinghouse Electric/Western Zirconium matter. Without in any way admitting on behalf of Complainant to any argument that a tolling agreement is necessary for this matter to be settled in the manner agreed to by the parties, counsel for complainant submits the following information. Mr. M. Lindsay Ford of Parsons, Behle & Latimer, counsel for Respondent, is copied on this response and understands that he is free to confirm the information below, or express a different response to the RJO's tolling agreement question.

During the early discussions regarding negotiation of a settlement in this matter (prior to the filing of a complaint), counsel for complainant and respondent discussed whether negotiating a formal tolling agreement was an appropriate prerequisite to continuing our already productive, but early, settlement negotiations. It was agreed that an exchange of emails between counsel on the question would suffice to give the parties confidence to continue to work toward a settlement. Thus, in an email sent on behalf of his client, counsel for respondent agreed that if this matter was not settled by a certain date, Respondent would not raise the statute of limitations as an affirmative defense to certain allegations made in any complaint thereafter issued by complainant. As the initial date passed the parties recognized that they were very close to a mutually acceptable settlement and so continued to negotiate the terms of the consent agreement. Soon thereafter, these two large and sophisticated parties, represented by experienced counsel, agreed to the settlement that has been put before the RJO for approval. Counsel for complainant notes that Respondent has agreed to all terms in the consent agreement, including those contained in paragraphs 4, 5 and 7; which paragraphs address each and every potential argument that could be brought by either party relating to the underlying civil allegations.

Sincerely,

Charles L. (Chuck) Figur  
Senior Enforcement Attorney  
for Hazardous Waste  
US EPA Region 8  
1595 Wynkoop Street  
Denver, Co 80202  
(303) 312 6915

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT and FINAL ORDER** in the matter of **WESTINGHOUSE ELECTRIC COMPANY, LLC.; DOCKET NO.: RCRA-08-2014-0003**, was filed with the Regional Hearing Clerk on July 29, 2014.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Charles Figur, Senior Enforcement Attorney, Mia Wood, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt and emailed on July 29, 2014, to:

M. Lindsay Ford, Attorney At Law  
Parsons, Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Parsonsbehle.com

And emailed to:

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

July 29, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk