



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

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DOCKET NO.: TSCA-08-2007-0013

NIобрARA ELECTRIC ASSOCIATION, INC.)	FINAL ORDER
)	
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 3rd DAY OF April, 2008



 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 APR -3 PM 2:19

DOCKET NO. TSCA-08-2007-0013

IN THE MATTER OF:)
)
NIOBRARA ELECTRIC ASSOCIATION,)
INC.) CONSENT AGREEMENT
3951 U.S. HIGHWAY 20)
LUSK, WY 82225,)
)
Respondent.)

Complainant, United States Environmental Protection Agency-Region 8, and Respondent, Niobrara Electric Association, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On September 27, 2007, Complainant issued a Complaint to Respondent in this matter alleging certain violations of the Toxic Substances Control Act (TSCA) and its implementing regulations. The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondent admits the jurisdictional allegations, and neither admits nor denies the remaining allegations, of the Complaint. Respondent waives its right to contest any allegations at a hearing or at a civil proceeding in connection with the enforcement of the Final Order incorporating this Consent Agreement.

3. Within 30 calendar days of receipt of a fully-executed Consent Agreement in this matter, Respondent shall pay a civil penalty in the amount of SIX THOUSAND FIVE HUNDRED EIGHTY-SEVEN DOLLARS AND 50 CENTS (\$6,587.50) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

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

The payment shall reference the name and address of Respondent and the EPA Docket Number of this action. A copy of the transmittal of payment shall be sent simultaneously to:

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

and

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

4. If Respondent fails to pay the amount specified in Paragraph 3 by the due date specified in that Paragraph, the entire proposed penalty of SIX THOUSAND FIVE HUNDRED EIGHTY-SEVEN DOLLARS AND 50 CENTS (\$6,587.50) shall immediately become due and owing by Respondent. Furthermore, interest on the entire proposed penalty of SIX THOUSAND FIVE HUNDRED EIGHTY-SEVEN DOLLARS AND 50 CENTS (\$6,587.50) shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of ONE HUNDRED DOLLARS (\$100) shall be imposed upon Respondent after the first 30 days that a payment, or any portion thereof, is overdue, with an additional charge of FIFTY DOLLARS (\$50) imposed for each subsequent 30-day period until the payment due is received. In addition, a 6% per annum penalty shall be applied on any principal

amount not paid within 90 days of any installment due date.

5. In addition to the payment described in Paragraph 3, above, Respondent agrees to perform a Supplemental Environmental Project ("SEP"), as described in Paragraphs 6-19, below.

6. Respondent shall undertake a SEP that is intended to secure significant environmental protection and promote pollution prevention within Respondent's service area. Specifically, Respondent shall test at least 450 transformers hanging on poles within its service area over the course of 24 months. The 24-month period shall begin within 30 calendar days of Respondent's receipt of a fully-executed Consent Agreement in this matter. Respondent estimates that the cost of testing each transformer will be \$55.05. Further, within 8 weeks of learning that any transformer it has tested pursuant to this Agreement contains more than 50 ppm PCBs, Respondent shall remove such transformer from service and replace it with a transformer that does not contain PCBs.

7. Respondent shall expend at least NINETEEN THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS (\$19,818) on the testing portion of the SEP, and shall provide Complainant with documentation of such expenditures as specified in Paragraph 11, below.

8. Respondent certifies that it is not under any legal obligation, other than created by this Agreement, to perform or develop the SEP by agreement, grant, or as injunctive relief in any other case or in compliance with state or local requirements.

9. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement

action for the SEP.

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

11. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP and in any event no later than July 15, 2010, unless the deadline is extended by the mutual agreement of the parties. The SEP Completion Report shall contain, at a minimum, the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement, and;
- (v) A description of the environmental and public health benefits resulting from the implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible.)

Respondent agrees that its failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent's being liable for stipulated penalties pursuant to Paragraph 14, below.

12. Respondent shall maintain legible copies of documentation of the underlying tests and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying tests and data to EPA within 15 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 Agreement, Respondent shall, by an authorized representative of Respondent, 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 the individual(s) 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.

13. Following receipt of the SEP Completion Report described in Paragraph 11, above, EPA will either:

- (i) Accept the SEP Completion Report;
- (ii) Reject the SEP Completion Report, notify Respondent in writing of deficiencies in the SEP Completion Report, and grant Respondent an additional 30 days to correct any deficiencies, or;
- (iii) Following the processes set forth in Subparagraph (ii) immediately above, if EPA still rejects the SEP Completion Report, it will do so in writing, and seek stipulated penalties in accordance with Paragraph 14, below.

If EPA elects to exercise option (ii), above, it will offer Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this Paragraph within 10 days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Respondent. Respondent agrees to comply with the terms of any such

statement.

14. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 7, above, Respondent shall be liable for stipulated penalties as provided below.

- (i) Except as provided in Subparagraph (ii) immediately below, for a SEP that has not been completed satisfactorily pursuant to this Agreement, Respondent shall pay a stipulated penalty to the United States in an amount equal to \$19,818, less the amount Respondent has expended on the SEP to date.
- (ii) If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation that at least 90% of the amount required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.
- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90% of the amount required to be expended on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of FIVE HUNDRED DOLLARS (\$500).
- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90% of the amount required to be expended on the SEP, Respondent shall not be liable for any stipulated penalties.
- (v) For failure to submit an initial SEP Completion Report as required by Paragraph 11, above, Respondent shall pay a stipulated penalty in the amount of FIFTY DOLLARS (\$50) for each day after the due date that the Report is submitted. For failure to submit a corrected SEP Completion Report as required by Paragraph 13(ii), above, Respondent shall pay a stipulated penalty in the amount of FIFTY DOLLARS (\$50) for each day beginning 10 days after Respondent's receipt

of EPA's written statement of its decision per Paragraph 13, above.

Stipulated penalties for Subparagraph v, above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the date the initial or corrected SEP Completion Report is received by EPA. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 3, above. Interest and late charges shall be paid in accordance with the provisions of Paragraph 4, above. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

15. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Toxic Substances Control Act.

16. If any event occurs that causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing within 10 days of the delay or date on which Respondent obtains knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken to prevent or minimize

the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of Respondent's obligation under this Agreement based on such incident.

17. If the Parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

18. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of EPA's decision and any delays in the completion of the SEP shall not be excused.

19. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

20. Respondent understands that failure to comply with any of the terms of this Consent Agreement, upon incorporation into

a Final Order, constitutes a breach of the Agreement and Order and may result in referral of the matter to the United States Department of Justice for enforcement of the Agreement, and for such other relief as is deemed appropriate.

21. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.

22. 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 settlement of the specific violations alleged in the Complaint in this matter. Upon full satisfaction by Respondent, Complainant hereby releases, covenants not to sue, and agrees not to seek further civil or administrative penalties for the specific violations alleged in the Complaint. Nothing in this Agreement shall be construed as a release or a covenant not to sue for any claim or cause of action for any criminal liability.

23. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer, applies to and is binding upon EPA and Respondent, and Respondent's successors and assigns. Any change in ownership or organizational status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's obligations under this Agreement. This Agreement contains all of the terms of the settlement agreed to by the Parties.

24. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Toxic Substances Control Act, its

implementing regulations, and other environmental laws.

25. Respondent agrees that the penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes under 28 U.S.C. § 162(f). Neither shall Respondent deduct for tax purposes any monies it expends relative to its performance of the SEP.

26. The Parties agree to bear their own costs and attorney fees.

27. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and bind that party to the Consent Agreement.

**U.S. ENVIRONMENTAL PROTECTION AGENCY-
REGION 8, Complainant.**

4/3/08

Date

Cynthia J. Reynolds

Cynthia J. Reynolds, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

4/3/08

Date

David J. Janik

David J. Janik, Director
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

NIOBRARA ELECTRIC ASSOCIATION, INC.,
Respondent.

3-31-08

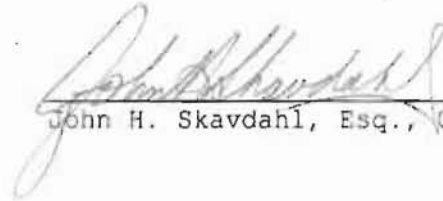
Date



Sheldon Albertson, Manager

3/31/08

Date



John H. Skavdahl, Esq., Counsel

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **NIOBRARA ELECTRIC ASSOCIATION, INC., DOCKET NO.: TSCA-08-2007-0013** was filed with the Regional Hearing Clerk on April 3, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Jessie Goldfarb, 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 and e-mailed on April 3, 2008 to:

John H. Skavdahl
Skavdahl & Edmund
P. O. Box 156
Harrison, NE 69346

Pouch and e-mailed to:

Honorable Spencer T. Nissen
Office of Administrative Law Judges
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

E-mailed to:

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

April 3, 2008



Tina Artemis
Paralegal/Regional Hearing Clerk