



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 27 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert D. Broderick
Registered Agent
United Power, Inc.
500 Cooperative Way
Brighton, Colorado 80603

Re: Administrative Complaint under the Toxic
Substances Control Act; Commerce City
refinery.

Dear Mr. Broderick:

Enclosed is a complaint and notice of opportunity for hearing, with some accompanying documents, for violations of the Toxic Substance Control Act having to do with the storage of PCBs at United Power's Commerce City, Colorado facility.

The complaint proposes a penalty of \$12,000. Information on how and when to contest the facts or proposed penalty are contained in the complaint. Please note that there is a 30 day time period by which you must act to contest the contents of the complaint.

Also note that under the Rules of Practice, you may just send in a check for that amount to settle the proceeding, without the need for a settlement agreement. 40 C.F.R. § 22.18. A sheet with payment instructions is enclosed.

Thank you for your cooperation. Please have the company contact me for further discussion or questions. I can be reached at 303.312.6917, in writing at the address on the letterhead above, or via e-mail at janik.david@epa.gov.

Sincerely,

David J. Janik, Supervisory Attorney
Legal Enforcement Program

Enclosures



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2007 SEP 27 AM 10:49

Docket No. **TSCA-08-2007-0014**

EPA REGION 8
NEWARK, NJ

IN THE MATTER OF:)	
)	
United Power, Inc.)	COMPLAINT AND NOTICE OF OPPORTUNITY
)	FOR HEARING
)	
Respondent.)	

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 United Power, 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 500 Cooperative Way in Brighton, Colorado.

4. On or about June 6-7, 2007, 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 at concentrations of 50 parts per million (ppm) or greater that are stored for disposal must be stored in compliance with the requirements outlined in the regulations. Specifically, the regulations require that PCBs stored in a storage facility as specified in the regulations must be checked for leaks every 30 days, and that records of such inspections must be maintained. 40 C.F.R. §761.65 (c)(5).

6. During the year 2003, Respondent removed from use and stored for disposal approximately 27, transformers, other electrical equipment, or drums containing PCBs at concentrations of 50 ppm or greater.

7. During the year 2004, Respondent removed from use and stored for disposal approximately 9, transformers, other electrical equipment, or drums containing PCBs at concentrations of 50 ppm or greater.

8. During the year 2005, Respondent removed from use and stored for disposal

approximately 13, transformers, other electrical equipment, or drums containing PCBs at concentrations of 50 ppm or greater.

9. During 2003, 2004, and 2005, Respondent either did not check the transformers, other electrical equipment, or drums containing PCBs it was storing for disposal every 30 days or, in the alternative, did not maintain records such inspections.

10. Respondent's failure to check the transformers, other electrical equipment, or drums containing PCBs it was storing for disposal every 30 days or, in the alternative, not maintain records such inspections, as required by 40 C.F.R. § 761.65 (c)(5), constitutes three violations of section 15 of TSCA, 15 U.S.C. § 2614.

NOTICE OF OPPORTUNITY FOR A HEARING

11. 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.

12. 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

13. 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. Enclosed are instructions explaining how to make such payments resolving the case.

SETTLEMENT NEGOTIATIONS

14. 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.**

15. 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

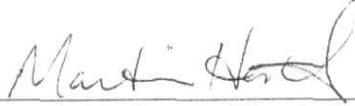
penalty of up to \$32,500 per day of violation for each violation of TSCA. In arriving at the amount of the penalty, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the nature, circumstances, extent, and gravity 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 potential introduction of PCBs to the environment and/or exposure to humans due to the inadequate storage of PCBs, as well as the amount of PCBs at issue, EPA proposes a total civil penalty of \$ 12,000 for these violations.

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

Date: 9.26.07

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: 9/27/07

By: 
Martin Hestmark, Director
Technical Enforcement Program

IN THE MATTER OF:
DOCKET NUMBER:

UNITED POWER, INC.
TSCA-08-2007-0014

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:

Mr. Robert D. Broderick
Registered Agent
United Power Inc.
500 Cooperative Way
Brighton, Colorado 80603

9/27/07
Date

Judith M. McTernan
Judith M. McTernan