

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 29 PM 1:08

IN THE MATTER OF:)	
)	
Powder River Energy Corporation)	COMPLAINT AND NOTICE OF
3410 East Second Street)	OPPORTUNITY FOR HEARING
Gillette, Wyoming 82718)	DOCKET NO.: TSCA-08-2008-0023
)	
Respondent)	

COMPLAINT

This is a civil administrative action (Complaint) commenced 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, and this COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING is authorized by the rules. 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action. These general allegations apply to each violation below.

GENERAL ALLEGATIONS

The following general allegations apply to each count below.

1. Respondent, Powder River Energy Corporation of Gillette, Wyoming, is a "person" within the meaning of 40 C.F.R. §761.3 and is thus subject to regulation.
2. Respondent was at all times relevant to this action, the owner or operator of a facility located at 3410 East Second Street, Gillette, Wyoming 82718 (Facility).
3. On or about May 23, 2007, Ms. Kim Le, an authorized EPA inspector, conducted an inspection of the 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 for the inspection were issued to and signed by Mr. Ray P. Miner, a representative of Respondent.
4. The PCB regulations define "disposal" of PCBs to include "spills, leaks, and other

uncontrolled discharges of PCBs...." 40 C.F.R. §761.3.

5. The PCB regulations require that PCBs, as defined at 40 C.F.R. §761.3, be disposed of by the incineration or burial methods specified in the regulations. 40 C.F.R. §761.60.
6. The PCB regulations define the term "leak or leaking" to mean any instance in which a PCB Article, PCB Container, or PCB Equipment has PCBs on any portion of its external surface. 40 C.F.R. §761.3.
7. The PCB regulations define the term "PCB Contaminated Electrical Equipment" as "any electrical equipment including, but not limited to, transformers . . . that contain[s] PCBs at concentrations of ≥ 50 ppm and < 500 ppm in the contaminating fluid . . ." 40 C.F.R. § 761.3.
8. The PCB regulations define the term "PCB Container" to mean any package. . . barrel, drum, tank or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs." 40 C.F.R. §761.3.
9. The PCB regulations define the term "PCB Item" to mean "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. 40 C.F.R. §761.3.
10. The PCB regulations define the term "PCB Transformer" to mean "any transformer that contains ≥ 500 ppm PCBs.

COUNT 1
(Failure to Conduct 30-Day Inspections During Calendar Year 2004)

11. The PCB regulations require that PCB Items in storage for disposal be checked for leaks at least once every 30 days and that any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers, that any spilled or leaked material shall be immediately cleaned up and that records of the inspections, maintenance and cleanup be maintained. 40 C.F.R. §761.65(c)(5).
12. During Calendar Year 2004, Respondent had PCB Items in storage for disposal at the Facility.
13. On or about May 23, 2007, EPA's Inspector asked to see Respondent's records of its 30 day inspections during Calendar Year 2004 and Respondent was unable to produce any such records.
14. Respondent's failure to conduct 30 day inspections on PCB Items in storage for disposal during Calendar Year 2004 constitutes a violation of 40 C.F.R. §761.65(c)(5).

COUNT 2
(Failure to Conduct 30-Day Inspections During Calendar Year 2005)

15. The PCB regulations require that PCB Items in storage for disposal be checked for leaks at least once every 30 days and that any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers, that any spilled or leaked material shall be immediately cleaned up and that records of the inspections, maintenance and cleanup be maintained. 40 C.F.R. §761.65(c)(5).
16. During Calendar Year 2005, Respondent had PCB Items in storage for disposal at the Facility.
17. On or about May 23, 2007, EPA's Inspector asked to see Respondent's records of its 30 day inspections during Calendar Year 2005 and Respondent was unable to produce any such records.
18. Respondent's failure to conduct 30 day inspections on PCB Items in storage for disposal during Calendar Year 2005 constitutes a violation of 40 C.F.R. §761.65(c)(5).

COUNT 3
(Failure to Conduct 30-Day Inspections During Calendar Year 2006)

19. The PCB regulations require that PCB Items in storage for disposal be checked for leaks at least once every 30 days and that any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers, that any spilled or leaked material shall be immediately cleaned up and that records of the inspections, maintenance and cleanup be maintained. 40 C.F.R. §761.65(c)(5).
20. During Calendar Year 2006, Respondent had PCB Items in storage for disposal at the Facility.
21. On or about May 23, 2007, EPA's Inspector asked to see Respondent's records of its 30 day inspections during Calendar Year 2006 and Respondent was unable to produce any such records.
22. Respondent's failure to conduct 30 day inspections on PCB Items in storage for disposal during Calendar Year 2005 constitutes a violation of 40 C.F.R. §761.65(c)(5).

PROPOSED TSCA PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. §2605, authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of TSCA. EPA's actions with respect to the assessment of civil penalties are guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990,

which provides a rational and consistent method for applying the TSCA statutory factors to the circumstances of a specific case, a copy of which is enclosed.

In arriving at a penalty for this matter, EPA took into consideration those factors required by section 16(a)(2)(B) of TSCA, 15 U.S.C. §2615(a)(2)(b), which include: 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 violations, including the actual or potential introduction of PCBs into the environment and/or exposure to humans, EPA proposes a penalty for the violations alleged in this Complaint of \$34,500, as shown below:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PENALTY</u>
1	Failure to Conduct 30 Day Inspections	\$3,546
2	Failure to Conduct 30 Day Inspections	\$3,546
3.	Failure to Conduct 30 Day Inspections	\$3,546
TOTAL PROPOSED PENALTY		\$10,638

NOTICE OF OPPORTUNITY FOR A HEARING

Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

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, U. S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, within 30 days of receiving this Complaint. 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

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. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this Complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," by one of the following methods and referencing EPA Region 8 and the Docket No. of this matter:

- | | |
|--------------------------|---|
| By U.S. Mail | U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000 |
| By Wire Transfer | Wire transfers should be directed to the Federal Reserve Bank of New York

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

A copy of the check must be mailed simultaneously to Richard H. Baird, at the addressed listed below.

SETTLEMENT NEGOTIATIONS

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 Mr. Dana J. Stotsky at (303)312-6905, or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9/26/08

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

Date: 9/29/08

By: David J. Janik
David J. Janik, Director
Matthew D. Cohn, Supervisory Enforcement Attorney
Legal Enforcement Program
303-312-6917
Janik.David@epa.gov

Date: 9/26/08

By: Dana J. Stotsky
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street, 8ENF-L
Denver, Colorado 80202-1129
Colorado Bar # 29718
Phone: (303)-312-6905
FAX: (303) 312-7202
Baird.Richard@epa.gov

ATTACHMENTS

Consolidated Rules of Practice, 40 C.F.R. Part 22
EPA PCB Penalty Policy dated April 9, 1990

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Attachments 1 and 2, were hand-carried 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 via Certified Mail, Postage Pre-Paid, to:

Mr. Les Penning, Vice-President
Powder River Energy Corporation
221 Main Street
P.O. Box 930
Sundance, Wyoming 82729

Date: 9/29/08

By: Judith McTernan
Judith McTernan