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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Anchorage Municipal Light & Power,

Anchorage, Alaska,

Respondent

)  
) DOCKET NO. TSCA-10-2014-0011  
)  
) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**  
)  
)  
)

**I. AUTHORITIES**

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of the CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3 Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Anchorage Municipal Light & Power (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3 Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1 Subpart D of 40 C.F.R. Part 761 regulates storage and disposal of PCBs by any person.

3.2 Respondent is an electric utility service provider, owned by the Municipality of Anchorage, and is a “person” as defined at 40 C.F.R. § 761.3.

3.3 At all times relevant to the alleged violation, Respondent owned and operated a facility located at 1200 East First Avenue, Anchorage, Alaska (“ML&P Facility”). The ML&P Facility is a “facility” as defined at 40 C.F.R. § 761.3.

3.4 Under 40 C.F.R. § 761.3, “PCB waste” includes PCBs and PCB Items that are subject to the disposal requirements of Subpart D of 40 C.F.R. Part 761. Pursuant to 40 C.F.R. § 761.65, PCB Items with PCB concentrations equal to or greater than 50 parts per million

("ppm") stored for disposal are subject to the storage for disposal regulations at 40 C.F.R. § 761.65.

3.5 40 C.F.R. § 761.65(a)(1) requires PCB waste to be disposed of in accordance with Subpart D of 40 C.F.R. Part 761 within one year from the date it was determined to be PCB waste and the decision was made to dispose of it.

3.6 On or around May 24, 2010, Respondent removed from use bushings and capacitors containing or contaminated with PCBs in concentrations equal to or greater than 50 ppm, marked them with May 24, 2010 as the removal from service date, and stored them for disposal at the ML&P Facility.

3.7 On or around December 7, 2012, US Ecology Idaho, Inc., received a shipment of PCB-contaminated and/or PCB-containing material, including the bushings and capacitors described in paragraph 3.6, from Respondent for disposal.

3.8 On February 20, 2013, the bushings and capacitors described in paragraph 3.6 were disposed of by Veolia Environmental Services, for US Ecology Idaho, Inc.

#### **Alleged Violation**

##### **(Storage of PCB Waste for Disposal for More than 1 Year)**

3.9 The bushings and capacitors with the removal from service date of May 24, 2010, stored for disposal at the ML&P Facility contained PCBs at concentrations equal to or greater than 50 ppm and therefore are subject to the storage for disposal requirements at 40 C.F.R. § 761.65.

3.10 Respondent stored PCB waste for disposal for more than one year, in violation of TSCA and 40 C.F.R. § 761.65(a)(1).



#### IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations set forth in this CAFO.

4.3 As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, and Respondent's degree of culpability, as well as other relevant factors.

4.4 EPA has determined and Respondent agrees that an appropriate penalty to settle this action is one thousand two hundred dollars (\$1,200).

4.5 Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6 Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.7 Respondent must serve photocopies of the check described in Paragraph 4.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

4.12 Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13 Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

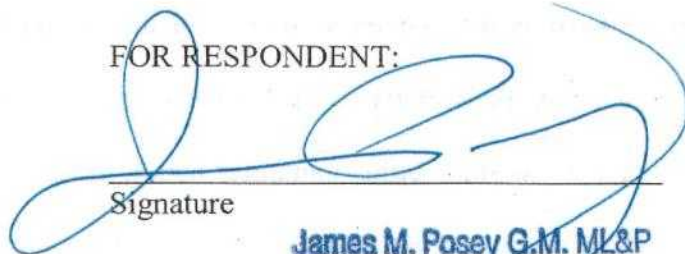
4.14 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

25 DEC 13

FOR RESPONDENT:



Signature

**James M. Posey G.M. ML&P**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED:

1/8/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Tristen Gardner  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.8 If Respondent fails to pay the penalty assessed by this CAFO in full by the due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

4.9 Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), if Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.10 The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.



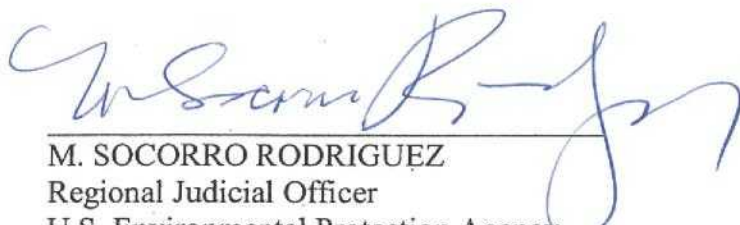
V. FINAL ORDER

5.1 The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violation alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3 This Final Order is effective upon filing.

SO ORDERED this 15<sup>th</sup> day of January, 2014

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10





Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Anchorage Municipal Light & Power, Docket No.: TSCA-10-2014-0011**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

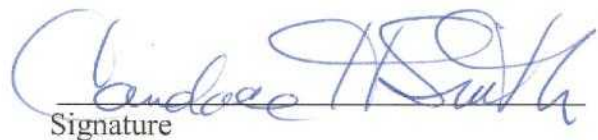
The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

James M. Posey  
Anchorage Municipal Light & Power  
1200 East First Avenue  
Anchorage, Alaska 99501

DATED this 10<sup>th</sup> day of January, 2014

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

