

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

| | | |
|-------------------------------------|---|------------------------------|
| In the Matter of |) | Docket No. TSCA-07-2012-0001 |
| |) | |
| Columbia Water and Light Department |) | CONSENT AGREEMENT |
| |) | AND |
| Columbia, MO |) | FINAL ORDER |
| |) | |
| Respondent |) | |

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Columbia Water and Light Department (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order (CAFO) serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has

violated federal regulations addressing the manufacture, processing, use distribution in commerce, disposal, storage, marking and notification and manifesting of polychlorinated biphenyls (PCBs), 40 C.F.R. Part 761 promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605(e), and thereby has violated Section 15 of TSCA, 15 U.S.C. § 2614.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region VII.

4. The Respondent, Columbia Water and Light Department, a person, as defined at 40 C.F.R. § 761.3, is an electric utility. The Respondent is and was at all times referred to in this Consent Agreement and Final Order, a political subdivision of the state of Missouri.

Section III

Violation

5. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

6. On or about January 14, 2009, an authorized EPA representative conducted an inspection of Respondent's facility located at 1514 East Business Loop 70, Columbia, Missouri.

7. During the inspection, the EPA representative observed, photographed, and collected documentary evidence regarding PCBs and PCB Items used, stored, and disposed of by Respondent.

8. Respondent's records indicated 60 drums of PCB debris generated from a spill involving Westinghouse transformer, S/N 57A19752, was generated. Said transformer had a PCB concentration of 715 parts per million (hereinafter ppm) concentration of PCBs.

9. Pursuant to 40 C.F.R. § 761.3, a PCB container is any package, can, bottle, bag, barrel, drum, tank or other device that contains PCBs or PCB articles and whose surface(s) has been in direct contact with PCBs.

10. Pursuant to 40 C.F.R. § 761.65(c)(1)(iii), PCB containers containing non-liquid PCBs may be temporarily stored in an area that does not comply with the requirements of 40 C.F.R. § 761.65 (b) for up to thirty days from the date they were removed from service.

11. During the January 14, 2009, inspection, the EPA representative inspected the PCB storage area and determined the storage area was approximately 12 feet by 12 feet, and would not hold 60 drums.

12. Respondent stated the drums referenced in paragraph 8, above, were stored outside the PCB storage area from March 14, 2008 through December 3, 2008, in violation of 40 C.F.R. § 761.65(c)(1)(iii), promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and therefore violated Section 15 of TSCA, 15 U.S.C. § 2614(1).

Consent Agreement

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
2. Respondent neither admits nor denies the factual allegations set forth above.
3. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
4. Respondent and EPA agree to conciliate this matter without the necessity of

formal hearing and to bear their respective costs and attorney's fees.

5. Respondent certifies by the signing of this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 761.

6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

7. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of 40 C.F.R. Part 761 alleged in this document.

8. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

9. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP) within ninety days from the date this agreement is finalized, which the parties agree is intended to secure significant environmental and/or public health benefit. Respondent agrees to the removal and proper disposal of 22 PCB contaminated transformers from its system. Total cost of the SEP including construction, replacement and disposal costs are estimated at approximately \$186,651.

10. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The report shall be directed to the following:

Marc Matthews
AWMD/WEMM
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

11. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

12. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

13. Respondent certifies it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

14. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP 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."

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Five Thousand Two Hundred Dollars (\$5,200.00) within thirty (30) days of the effective date of this Final Order. The payment shall be identified as **In the Matter of Columbia Power and Light Department**. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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"

2. A copy of the check or other information **confirming payment shall**
simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

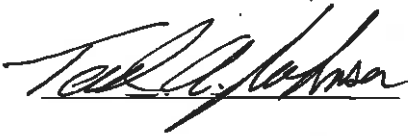
Kent Johnson, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each **bear their own costs and attorneys' fees**
incurred as a result of this matter.

RESPONDENT

Columbia Power and Light Department

Date: 10/31/11

By: 


Ted Johnson
Print Name

Director of Water + Light
Title

COMPLAINANT


U. S. Environmental Protection Agency

Date: 07/17/11



Rebecca Weber
Director
Air and Waste Management Division

Date: 11/17/11



Kent Johnson
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Nov. 21, 2011



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Columbia Water and Light Department, Respondent
Docket No. TSCA-07-2012-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Tad Johnson
Director of Water and Light
Columbia Water and Light Department
1514 East Business Loop 70
Columbia, Missouri 65201

Dated: 11/21/11



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7