



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08


2009 FEB 11 AM 9:57

DOCKET NO.: TSCA-08-2009-0010

IN THE MATTER OF:)	
)	
OTTER TRAIL POWER COMPANY)	FINAL ORDER
2111 Fifteenth Street North)	
Wahpeton, ND 58075)	
)	
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 11th DAY OF February, 2009.



Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	
)	
Otter Tail Power Company)	COMPLAINT AND CONSENT AGREEMENT
2111 Fifteenth Street North)	(SIMULTANEOUS AND COMBINED)
Wahpeton, ND 58075)	
)	DOCKET NO. : TSCA-08-2009-0010
Respondent.)	

COMPLAINT

This is a civil administrative action (Complaint) 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, and this COMPLAINT AND CONSENT AGREEMENT (simultaneous combined action) 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.

ALLEGATIONS

1. Otter Tail Power Company, 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 2111 Fifteenth Street North, Wahpeton, ND 58075 (Facility).
3. On or about October 23, 2008, Ms. Kim P. 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 Yvonne Berg, a representative of Respondent. The regulations for polychlorinated biphenyls (PCBs) at 40 C.F.R. part 761 require that PCB items may not be stored in temporary areas for over 30 days and that all areas where PCBs are stored must be marked with an EPA approved PCB sign.

4. Respondent, by its operations, is required to remove PCB items stored in temporary PCB storage areas within 30 days. 40 C.F.R. § 761.65(c)(1).
5. Respondent, by its operations, is required to mark all PCB storage areas, including temporary PCB storage areas, with an EPA approved sign. 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3).
6. During the inspection referenced above, the EPA Inspector observed that Respondent stored a 55 gallon PCB drum containing approximately 20 gallons of PCB contaminated dielectric fluid. The EPA inspector also observed that Respondent operated an oil processing area that included PCB drums and a pump. This area was not marked with an EPA approved PCB sign.
7. Failure to conduct to remove PCB items from temporary storage areas within 30 days and failure to mark a temporary PCB storage area, are two violations of TSCA's implementing regulations.

CONSENT AGREEMENT

8. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.
9. Respondent waives his/her right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.
10. This Complaint and Consent Agreement, upon incorporation into a Final Consent Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.
11. 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.

12. Based on the factors listed in paragraph 11, Respondent's acknowledgement that it is in full compliance with the requirements of TSCA, EPA has determined that an appropriate civil penalty to settle this action is **ONE THOUSAND SIX HUNDRED FORTY-FOUR Dollars (\$1,644.00)**.
13. Respondent consents, for the purpose of settlement, to the issuance of a final consent order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph. Respondent further consents, for the purpose of settlement, to pay the civil penalty as follows:
- a. Payment is due within 30 calendar days from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
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"

Overnight Mail:

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

Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sfo1.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

Ms. Kim Le, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty-

day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
14. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
 15. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
 16. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.
 17. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.
 18. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.
 19. Each party shall bear its own costs and attorney fees in connection with this matter.
 20. This Complaint and Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: 2/9/09

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

Date: 2/9/09

By: Mike Risner
Mike Risner, Director
Matthew D. Cohn, Supervisory Enforcement
Attorney
Legal Enforcement Program


Date: 2/5/09

By: Eduardo Quintana
Eduardo Quintana, Senior Enforcement Attorney
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303)-312-6924
FAX: (303) 312-7519

OTTER TAIL POWER COMPANY,

Respondent.

Date: 2/2/09

By: 
PRINTED NAME: Rodney C. H. Scheel
TITLE: Vice President, Asset Management

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter **OTTER TRAIL POWER COMPANY;** **DOCKET NO.: TSCA-08-2009-0010;** these documents were filed with the Regional Hearing Clerk on February 11, 2009.

Further, the undersigned certifies that a true and correct copies of the documents were delivered to Eduardo Quintana, Senior 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 requested on February 11, 2009 to:

Rodney C. H. Scheel
Vice President, Asset Management
2111 Fifteenth Street North
Wahpeton, ND 58075

E-mailed to:

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

February 11, 2009



Tina Artemis
Paralegal/Regional Hearing Clerk

