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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
Battelle Energy Alliance, LLC;
and Wheeler Electric, Inc;
Respondents.

Docket No. TSCA-10-2008-0046

CONSENT AGREEMENT

1. This administrative proceeding is simultaneously being commenced and concluded by issuance of this Consent Agreement along with the accompanying Final Order. The authority for this procedure is set forth at 40 C.F.R. § 22.13(b). This Consent Agreement contains terms for the settlement of claims which the United States Environmental Protection Agency ("EPA") asserts against Battelle Energy Alliance, LLC ("Battelle"), and Wheeler Electric, Inc. ("Wheeler"). Battelle and Wheeler will be together referred to as "Respondents." The authority for EPA to assert the claims in this matter is provided by Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615.

2. For the purpose of this proceeding, Respondents admit the jurisdictional allegations contained herein. While neither admitting nor denying the specific factual allegations set forth in Paragraphs 3 through 5 below, Respondents nevertheless waive the right to contest those allegations. Respondents also waive the right to appeal the accompanying Final Order.

3. The United States Department of Energy ("DOE") owns Idaho National Laboratory ("INL"), a facility located in Idaho Falls, Idaho. Battelle operates this facility as a contractor to

Consent Agreement

Battelle and Wheeler
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1 DOE, and Wheeler has been retained by Battelle to perform certain electrical-related work at INL.
2 The Power Plant Building of the Material Fuels Complex at INL was built for DOE in the 1950s.
3 There were transformers located outside of the Power Plant Building which were replaced by DOE
4 in 1988. The transformers which were removed from the facility contained polychlorinated
5 biphenyls ("PCBs") at a concentration of 500,000 parts per million ("ppm"). These transformers
6 had been connected by a cable conduit to a switch located inside the Power Plant Building. The
7 cable conduit was left in-place by DOE until 2006.

8 4. On July 12, 2006, a spill of PCBs occurred at INL when four employees of Wheeler
9 removed the oily cable from the conduit at the Power Plant Building of the Material Fuels Complex.
10 There were PCBs detected in the spilled oil at a concentration of 260,000 ppm. During the cable
11 removal work, the clothes and boots of Wheeler employees became contaminated with PCBs. As
12 the cable was being handled and moved by the employees, the first and third floors of the Power
13 Plant Building, as well as a stairway in the building and an area outside of the building, also became
14 contaminated with PCBs. When the Wheeler employees left for home at the conclusion of the work
15 day, they continued to wear oil-soiled boots and clothes, resulting in PCB contamination of their
16 vehicles and residences. Beginning on July 13, 2006, Battelle performed a cleanup of the PCBs
17 spilled at INL, the PCB-contaminated clothing and boots of Wheeler employees, and the vehicles
18 and residences impacted by contamination from PCBs.

19 5. The spill of PCBs in areas within and outside of INL, and the discharge of PCBs which
20 impacted the Wheeler employees are each a failure to properly dispose of PCB liquid. There were
21 at least ten such areas of a release of PCBs, and in some of these locations the discharge continued
22 to occur for several days. For each separate location and day where there was a failure to properly
23 dispose of PCBs, there is an associated separate violation of 40 C.F.R. § 761.60(a)(1), and Section
24 15(1) of TSCA, 15 U.S.C. § 2614(1).

25 6. Respondents consent to the assessment and payment of a civil penalty totaling \$61,000,
26 to be split evenly between the two parties. Accordingly, Battelle agrees to pay a civil penalty in the
27 amount of thirty thousand five hundred dollars.(\$30,500), and Wheeler agrees to pay a penalty of
28

Consent Agreement

Battelle and Wheeler
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1 thirty thousand five hundred dollars (\$30,500). The total penalty amount has been arrived at through
2 an application of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).
3 The calculated penalty amount is also in accord with the applicable penalty policy of EPA. The
4 penalty payments shall be made within 30 days of the filing of the Final Order. The payments shall
5 be by cashier's or certified check made payable to the order of "Treasurer, United States of
6 America." The check shall be submitted to:

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

10 Along with payment, a transmittal letter shall be provided which sets forth the information contained
11 in the caption of this case, including the case title and docket number, together with a description
12 of the obligation being satisfied by Respondents. At the time of payment, a copy of the check and
13 transmittal letter shall also be provided to Clifford J. Villa, Assistant Regional Counsel for EPA, and
14 to Carol Kennedy, Regional Hearing Clerk. The mailing address for Mr. Villa and Ms. Kennedy
15 is: U.S. Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, ORC-158, Seattle,
16 Washington 98101.

17 7. Should there be a failure to pay the penalty in full by its due date, the entire unpaid
18 balance of penalty and accrued interest shall become immediately due and owing. Should such a
19 failure to pay occur, the non-paying party may be subject to a civil action to collect the assessed
20 penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the
21 penalty is not subject to review.

22 8. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should there be a failure
23 to pay any portion of the penalty in full by its due date, the non-paying party shall be responsible
24 for payment of interest on any unpaid portion of the assessed penalty shall at the rate established by
25 the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
26 accompanying Final Order, provided, however, that no interest shall be payable on any portion of
27 the assessed penalty that is paid within 30 days of the effective date of the Final Order.

28 Consent Agreement

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9. This Consent Agreement is binding upon Respondents, including all officers, directors, servants, employees, agents, successors, and assigns of Respondents.

10. Each party shall bear its own costs in bringing or defending this action.


11. EPA and Respondents agree to the accompanying Final Order as presented to the Regional Judicial Officer.

United States Environmental
Protection Agency

Battelle Energy Alliance, LLC

Wheeler Electric, Inc.

Clifford J. Villa
Assistant Regional Counsel



ARTHUR CLARK
VICE PRESIDENT

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United States Environmental
Protection Agency

Battelle Energy Alliance, LLC

Wheeler Electric, Inc.

Clifford J. Villa
Assistant Regional Counsel

Douglas Wheeler
President

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United States Environmental
Protection Agency

Battelle Energy Alliance, LLC

Wheeler Electric, Inc.


Clifford J. Villa
Assistant Regional Counsel

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

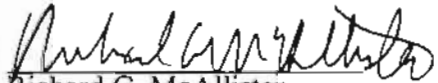
In the Matter of:
Battelle Energy Alliance, LLC;
and Wheeler Electric, Inc.;
Respondents.

Docket No. TSCA-10-2008-0046

FINAL ORDER

It is hereby ordered that Battelle Energy Alliance, LLC, and Wheeler Electric, Inc. (together referred to as "Respondents") comply with all terms of the Consent Agreement executed by the United States Environmental Protection Agency ("EPA") and Respondents in this matter. This compliance obligation is effective upon the date of filing of the Consent Agreement along with this Final Order.

This Final Order resolves only that cause of action that has been alleged by EPA in the Consent Agreement. This Final Order does not waive, extinguish, or otherwise affect the obligation of Respondents to comply with all applicable provisions of the Toxic Substances Control Act, and the regulations promulgated thereunder.


Richard G. McAllister
Regional Judicial Officer
EPA Region 10

12/20/2007
Date

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Battelle Energy Alliance, LLC., DOCKET NO.: TSCA-10-2008-0046**, was filed with the Regional Hearing Clerk on December 20, 2007.

On December 20, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Clifford Villa, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 on December 20, 2007, to:

Douglas Wheeler, President
Wheeler Electric, Inc.
469 W. 16th Street
Idaho Falls, ID 83402

Daniel T. Swanson
Senior Environmental Counsel
P.O. Box 1625
2525 North Fremont Ave.
Idaho Falls, ID 83415

DATED this 20th day of December 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10