



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**

**1595 WYNKOOP STREET**

**DENVER, CO 80202-1129**

**Phone 800-227-8917**

**http://www.epa.gov/region08**

2009 AUG 28 AM 8:03

FILED  
EPA REGION VIII  
HEARING CLERK

**DOCKET NO.: TSCA-08-2009-0012**

IN THE MATTER OF:

**BISMARCK STATE COLLEGE**

1500 Edwards Avenue

Bismarck, ND 58501

**RESPONDENT**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**FINAL ORDER**

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 28<sup>th</sup> DAY OF August, 2009.

Elyana R. Sutih  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 AUG 28 AM 8:04

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
Bismarck State College ) COMPLAINT AND CONSENT AGREEMENT  
1500 Edwards Avenue ) (SIMULTANEOUS AND COMBINED)  
Bismarck, ND 58501 )  
) **DOCKET NO. : TSCA-08-2009-0012**  
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. These general allegations apply to the one violation below.

**ALLEGATIONS**

1. Bismarck State College, 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 1500 Edwards Avenue, Bismarck, North Dakota (Facility).
3. On June 24, 2008, Ivana Striebel, an authorized State 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 Robert Kuntz, a representative of Respondent.
4. During the inspection referenced above, the inspector observed a leaking transformer with unknown concentration of PCB contaminated oil. Subsequent testing of the oil revealed a concentration of 170 ppm. Leakage of PCB oil at a concentration greater than 50 ppm constitutes improper disposal of PCBs. 40 C.F.R part 761.60.

5. Improper disposal of PCB contaminated oil is one violation of TSCA's implementing regulations.

### CONSENT AGREEMENT

6. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.
7. 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.
8. 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.
9. 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.
10. Based on the factors listed in paragraph 9, 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 THREE HUNDRED SEVENTY Dollars (\$1,370)**.
11. 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 17<sup>th</sup> 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](http://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:**

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

and

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.

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

#### 12. Description of the SEP

- a. Respondent shall perform a SEP that involves replacement of the one remaining transformer at the college that contains PCB-contaminated oil (serial number TAV2345-01). This transformer will be replaced with a PCB-free transformer.
- b. Respondent shall complete the work on the SEP no later than November 30, 2009, unless the parties agree in writing to an extension of the completion date.
- c. The total expenditure for the SEP shall be not less than Four Thousand One Hundred and Ten Dollars (\$4,110). Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

13. Respondent hereby certifies that, as of the date of this Consent Agreement, 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 in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

#### 14. SEP Reports

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the SEP. The SEP Completion Report shall contain the following information:
  - (i) A detailed description of the SEP as implemented, along with representative photographs;
  - (ii) A description of any operating, implementing or performance problems encountered and the solutions thereto;
  - (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
  - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.

- b. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.
15. Respondent agrees that EPA may inspect the location where the SEP is being performed at any time in order to confirm that the SEP is being implemented, consistent with the representations made herein.
16. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement, and shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

17. EPA acceptance of SEP Reports.

- a. Following receipt of the SEP Completion Report described above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.
- b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement.

18. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
19. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

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

### **STIPULATED PENALTIES AND LATE FEES**

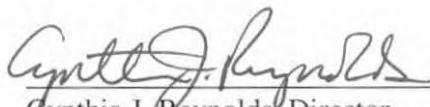
20. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of Four Thousand One Hundred and Ten Dollars (\$4110).
  - b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Four Thousand One Hundred and Ten Dollars (\$4110) less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
  - c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.
21. Stipulated penalties for subparagraph 21(c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
22. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the paragraph 11.

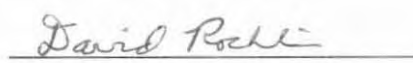



23. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
24. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
25. 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.
26. 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.
27. 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.
28. Each party shall bear its own costs and attorney fees in connection with this matter.
29. 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.

In the Matter of: Bismarck State College  
Docket No.  
(Continued)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,  
Complainant.

Date: 8/26/09 By:   
Cynthia J. Reynolds, Director  
Technical Enforcement Program


Date: 8/27/09 By:   
Mike Risner, Director  
David Rochlin, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 8/26/2009 By:   
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

In the Matter of: Bismarck State College  
Docket No.  
(Continued)

BISMARCK STATE COLLEGE,  
Respondent.

Date: 8-24-09

By: 

PRINTED NAME: Dave Clark

TITLE: Executive Vice President

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** in the matter of **BISMARCK STATE COLLEGE; DOCKET NO.: TSCA-08-2009-0012** was filed with the Regional Hearing Clerk on August 28, 2009.

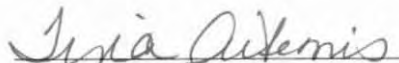
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 28, 2009, to:

Scott K. Brand, Security Supervisor  
Bismarck State College  
1500 Edwards Avenue  
Bismarck, ND 58501

E-mailed to:

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

August 28, 2009

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

