

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEARING CLERK

**IN THE MATTER OF:** )  
)  
UNITED STATES )  
DEPARTMENT OF DEFENSE )  
DEPARTMENT OF THE AIR FORCE )  
AIR MOBILITY COMMAND )  
319th AIR REFUELING WING )  
GRAND FORKS AIR FORCE BASE )  
575 Tuskegee Airmen Blvd )  
Grand Forks AFB, ND 58205-6436 )  
)  
Respondent. )

NOTICE OF NONCOMPLIANCE AND  
NOTICE OF OPPORTUNITY FOR  
CONFERENCE

DOCKET NO.: TSCA-08-2010-0002

This Notice of Noncompliance and Notice of Opportunity for Conference (Notice) is instituted pursuant to the authority vested in 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, and Executive Order 12088, *Federal Compliance With Pollution Control Standards*. The Complainants are the undersigned EPA Region 8 officials, who have been duly authorized to institute this action.

Any "person," as defined in 40 C.F.R. § 761.3, who has violated or is violating any requirement of TSCA or who knowingly violates any material condition or requirement of TSCA or the regulations, may be subject to administrative, civil, and/or criminal sanctions under section 17 of TSCA, 15 U.S.C. § 2616. The general allegations below apply to each count.

## GENERAL ALLEGATIONS

1. EPA has jurisdiction of this matter under section 16 of TSCA, 15 U.S.C. § 2615.
2. Respondent is the 319th AIR REFUELING WING, AIR MOBILITY COMMAND, DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF DEFENSE, operationally located at Grand Forks Air Force Base (AFB), North Dakota, a part of the Executive Branch of the United States, and a “person” within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.
3. At all times relevant to this action, Respondent was the owner and operator of the facility Grand Forks AFB located in Grand Forks, North Dakota.
4. On or about May 20, 2009, Ms. Ivana Striebel, an authorized North Dakota inspector (the inspector), conducted an inspection of the facility, with the consent of the Respondent, to determine compliance with TSCA and the implementing regulations related to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to a representative of the Respondent.
5. There are specific requirements for owners and operators of any facilities used for the storage of PCBs and PCB items when storing for disposal. These requirements are set out in 40 C.F.R. § 761.65(b)(1).
6. The PCB regulations define the term “disposal” as  

“[i]ntentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.” 40 C.F.R. § 761.3.

7. The PCB regulations require that PCB liquids at concentrations greater than or equal to 50 ppm must be disposed of in accordance with the regulations found at 40 C.F.R. § 761.60.

**COUNT 1 (Failure to Properly Store for Disposal)**

8. On September 4, 2008, Grand Forks AFB tested forty-three transformers for PCB concentration levels in the associated dielectric fluids. On October 3, 2008, laboratory results showed that one of the transformers identified in the preceding sentence contained a PCB concentration of 85.7 ppm. A transformer containing a PCB concentration greater than or equal to 50 ppm, but less than 500 ppm, is regulated by rule as “PCB-contaminated electrical equipment.” 40 C.F.R. § 761.3.
9. Areas in facilities used for storage of PCBs, PCB Items and PCB-contaminated electrical equipment, among others, are required to meet certain requirements, including adequate roofing, floor curbing, etc. 40 CFR § 761.65(b)(1).
10. From October 3, 2008 until April 30, 2009, the transformer identified in the second sentence of Paragraph 8 above, was stored in an area that did not meet the storage for disposal requirements found at 40 CFR § 761.65(b)(1).
11. Respondent’s failure to store PCB-contaminated electrical equipment in a storage for disposal area meeting the requirements of 40 CFR § 761.65(b)(1), constitutes a violation of section 15 of TSCA, 15 U.S.C. § 2614.

**COUNT 2 (Improper Disposal)**

12. During the inspection, the inspector observed a General Electric transformer carcass, serial number D271663, being stored outside. A review of facility records indicated that the PCB concentration of dielectric fluid contained in this transformer was tested on September 4, 2008, and had a PCB concentration of 85.7 ppm.
13. On April 30, 2009, the dielectric fluid was removed from the transformer identified in the preceding paragraph and added to 1500 gallons of non-PCB oil. This 'mixed' oil was then transported off site. (The volume of the PCB dielectric fluid from this transformer is unknown.)
14. 40 CFR § 761.1(b)(5) provides that "no person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless specifically provided".
15. Respondent's conduct, disposing PCB dielectric fluid with a concentration greater than 50 ppm by mixing it with unregulated oil and then discarding the combined contents in an unregulated manner, constitutes failure to properly dispose PCB dielectric fluids as required by 40 C.F.R. § 761.60(a), and is also a violation of section 15 of TSCA, 15 U.S.C. § 2614.

**NOTICE OF RIGHT TO  
SCHEDULE A CONFERENCE**

If Respondent wishes to discuss the violations alleged, a request for a conference must be made within fifteen (15) days of receipt of this Notice. Any request for a conference should be made to Dana J. Stotsky, attorney for Complainant, at (303) 312-6905.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice, Complainant.**

Date: March 8, 2010

By: Cynthia J. Reynolds  
Cynthia J. Reynolds, Director  
Technical Enforcement Program  
U.S. EPA Region 8

Date: March 8, 2010

By: David Rochlin  
David Rochlin  
Supervisory Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8

Date: March 8, 2010

By: Dana Stotsky  
Dana Stotsky  
Senior Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8

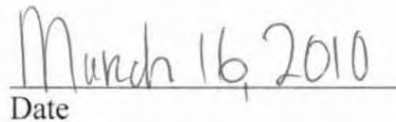
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the NOTICE OF NONCOMPLIANCE AND NOTICE OF OPPORTUNITY FOR CONFERENCE was hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Stephen M. Braun  
Environmental Engineer  
Grand Forks Air Force Base  
575 Tuskegee Airmen Blvd  
Grand Forks AFB, ND 58205-6436



Cheryl Turcotte  
Technical Enforcement Program  
U.S. EPA, Region VIII



Date