



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

JUL 24 2017

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number 7012 3460 0002 1646 2404

Mr. Kevin Aiello
Administrator, Environmental Quality
Middlesex County Utilities Authority
2571 Main Street Extension
Sayreville, New Jersey 08872

Re: In the Matter of Middlesex County Utilities Authority
Docket No. TSCA-02-2017-9103

Dear Mr. Aiello:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2.

Please note that the thirty (30) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check or other reasonable proof that such payment has been made is promptly mailed to:

Vivian Chin, Environmental Engineer
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

Please contact Ms. Chin at (732) 906-6179, or by electronic mail at chin.vivian@epa.gov, should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

2017 JUL 26 AM 7:35

U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2017 JUL 26 AM 7:35
U.S. Environmental Protection Agency

-----X
In the Matter of :
 :
 : CONSENT AGREEMENT
 Middlesex County Utilities Authority : AND
 : FINAL ORDER
 Respondent. :
 :
 : Docket No.
 Proceeding under the Toxic Substances : TSCA-02-2017-9103
 Control Act, 15 USC §§ 2601-2697 et seq, :
 as amended ("TSCA"). :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Middlesex County Utilities Authority (hereinafter "Respondent") violated Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is Middlesex County Utilities Authority.
2. Respondent owns, operates, and/or controls the facility in and around 2571 Main Street Extension in Sayreville, New Jersey (hereinafter "Respondent's facility").
3. On or about August 31, 2016, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. As a result of the inspection, EPA determined that Respondent had two PCB Transformers in operation at different locations which had each leaked onto the concrete pad below.
5. Pursuant to the regulations at 40 C.F.R. § 761.50(a)(4), spills and other uncontrolled discharges of PCBs at concentrations of 50 parts per million (ppm) or greater constitute the disposal of PCBs.
6. The leaks of PCBs from Respondent's PCB Transformers each constitutes the disposal of liquid PCBs in a manner not authorized by 40 C.F.R. § 761.60(a).
7. On or about January 30, 2017, Complainant sent to Respondent a Notice of Opportunity Related to Enforcement Action Under TSCA, which alleged that Respondent had violated the PCB regulations at 40 C.F.R. Part 761.
8. On March 20, 2017, the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.
2. Respondent is a "person" within the meaning of 40 C.F.R. §761.3.

3. Disposal of liquid PCBs in an unauthorized manner is a violation of 40 C.F.R. § 761.60(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWENTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$22,500)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, payment may be made by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account: 68010727;
- 4) ABA number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency";
- 6) Name of Respondent; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date").

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. Full payment of the penalty described in paragraph 3, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in paragraphs 4 through 6 in the "Findings of Fact" section, above, and paragraph 3 in the "Conclusions of Law" section, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Any responses, documentation, and other communications submitted to EPA in connection with this Consent Agreement shall be sent to:

Vivian Chin, Environmental Engineer
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Kevin Aiello
Administrator, Environmental Quality
Middlesex County Utilities Authority
2571 Main Street Extension
Sayreville, New Jersey 08872

12. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

BY: 

Middlesex County Utilities Authority

Richard L. Fitamant

NAME: _____

(PLEASE PRINT)

Executive Director

TITLE: _____

DATE: July 14, 2017

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

DATE: 7/20/17

In the Matter of Middlesex County Utilities Authority

Docket Number TSCA-02-2017-9103

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Middlesex County Utilities Authority, bearing Docket Number TSCA-02-2017-9103. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, pursuant to the authority of 40 C.F.R. § 22.18(b)(3), as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)).

DATE: July 20, 2017

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Middlesex County Utilities Authority
Docket Number TSCA-02-2017-9103

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of July 2017, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2017-9103, by certified mail, return receipt requested, to:

Mr. Kevin Aiello
Administrator, Environmental Quality
Middlesex County Utilities Authority
2571 Main Street Extension
Sayreville, New Jersey 08872

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.


