



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
2890 WOODBRIDGE AVE.  
EDISON, NEW JERSEY 08837

JUL 17 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Andrea Schmitz, Vice President  
Environment, Health and Safety  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003-3598

Re: Consent Agreement Issued Under the Toxic Substances Control Act - TSCA-02-2017-9201

Dear Ms. Schmitz:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Acting Regional Administrator 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:

Ann Finnegan, Life Scientist  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, NJ 08837

Please contact Ms. Finnegan at (732) 906-6177, or by electronic mail at [finnegan.ann@epa.gov](mailto:finnegan.ann@epa.gov), should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure

U.S. Environmental Protection Agency-Region 2  
2017 JUL 20 PM 3:01  
RECEIVED  
2017 JUL 20 PM 3:01

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Region 2  
2017 JUL 20 PM 3:01  
RECEIVED  
JUL 19 2017

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In the Matter of :  
Consolidated Edison Company : CONSENT AGREEMENT  
of New York, Inc., : AND  
Respondent. : FINAL ORDER  
Proceeding under the Toxic Substances : Docket No.  
Control Act, 15 USC §§ 2601-2697 et seq. : TSCA-02-2017-9201  
As amended ("TSCA") :  
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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 Consolidated Edison Company of New York, Inc. (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 Consolidated Edison Company of New York, Inc.
2. On July 3, 2016, September 20, 2016, and November 7, 2016, Respondent notified EPA of certain facts and circumstances that may have constituted violations of certain provisions of the PCB regulations at 40 CFR Part 761 regarding the storage, manifesting, and disposal of PCB waste.
3. By letter dated July 27, 2016, Cycle Chem, Inc. of Elizabeth, New Jersey (hereinafter "Cycle Chem") notified EPA that Respondent had shipped PCB waste to them without fully identifying it on the manifest.
4. As a result of EPA's review of the information described in paragraphs 2 and 3, above, EPA determined that Respondent had committed several violations of the regulations at 40 CFR Part 761 regarding the storage, manifesting, and disposal of PCB waste, as described in paragraphs 5 through 9, below.
5. During the period November 23, 2015 to September 19, 2016, Respondent stored PCB bulk product waste (coal tar wrap) at Respondent's College Point Service Center in Flushing, New York for more than the 180 days allowed under the extended storage approval issued to Respondent by EPA Region 2 on September 21, 2012 (hereinafter "Respondent's extended storage approval") pursuant to 40 C.F.R. § 761.65(c).
6. On or about June 25, 2016, Respondent shipped PCB waste from its Farrington Street Flush Truck Waste Transfer Facility in Flushing, New York to Clean Earth of North Jersey (hereinafter "Clean Earth") in Kearny, New Jersey for off-site disposal without identifying the material as PCB waste on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
7. On or about July 16, 2016 to July 19, 2016, Respondent shipped PCB remediation waste from the clean out of several of Respondent's underground structures located within its service territory in the Bronx, New York and Westchester County, New York to Cycle Chem for

off-site disposal without identifying the material as PCB waste on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).

8. On or about October 13, 2016 to October 20, 2016, Respondent shipped PCB remediation waste from the clean out of several of Respondent's underground structures located within its service territory in Brooklyn and Queens, New York to Clean Earth for off-site disposal without identifying the material as PCB waste on EPA Manifest form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).

9. On or about October 21, 2016, the PCB remediation waste described in paragraph 8, above, was disposed of at Waste Management Inc.'s GROWS Landfill facilities located in Tullytown and Morrisville, Pennsylvania in a manner not authorized under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii).

10. On February 15, 2017, the parties met for an informal settlement conference prior to the issuance of any enforcement action.

#### CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facilities which are 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. Storage of PCB bulk product waste for more than 180 days is a violation of Respondent's extended storage approval and the regulations at 40 C.F.R. § 761.65(c), 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).

4. Failure to identify PCB waste submitted for off-site disposal on EPA Manifest form 8700-22 is a violation of 40 C.F.R. § 761.207(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).

5. Disposal of PCB remediation waste in a manner not authorized by 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii) is a violation of 40 C.F.R. § 761.61(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. 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.

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **EIGHTY TWO THOUSAND TWO HUNDRED AND SEVENTY FIVE DOLLARS (\$82,275.00)** 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 Funds 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.

3. Full payment of the penalty described in paragraph 3, above, shall fully and finally resolve Respondent’s liability for federal civil penalties for only the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, 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.

4. 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.

5. 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.

6. 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 Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent 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.

7. 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 Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

8. 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.

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

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

Ann Finnegan, Life Scientist  
U.S. Environmental Protection Agency, Region 2  
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:

Andrea Schmitz, Vice President  
Environment, Health and Safety  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003-3598

11. 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: Carolyn W. Jaffe  
Consolidated Edison Company of New York, Inc.

NAME: CAROLYN W. JAFFE  
(PLEASE PRINT)

TITLE: Associate General Counsel

DATE: 7/7/17

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

DATE: 7/10/17



In the Matter of Consolidated Edison Company of New York, Inc.  
Docket Number TSCA-02-2017-9201

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Consolidated Edison Company of New York, Inc., bearing Docket Number TSCA-02-2017-9201. 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 12, 2017

Walter Nugdan

for

Catherine McCabe  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

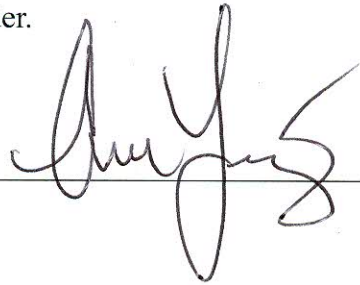
In the Matter of Consolidated Edison Company of New York, Inc.  
Docket Number TSCA-02-2017-9201

CERTIFICATE OF SERVICE

This is to certify that on the 17<sup>th</sup> 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-02-2017-9201, by certified mail, return receipt requested, to:

Andrea Schmitz, Vice President  
Environment, Health and Safety  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003-3598

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.



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