



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVE.
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION II
2008 FEB -5 AM 10:51
REGIONAL HEARING
CLERK

JAN 30 2008

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Mr. Randolph Price, Vice President
Environmental Health & Safety
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, N.Y. 10003-3598

Re: In the Matter of Consolidated Edison Company of New York, Inc.
Docket No. TSCA-02-2008-9209

Dear Mr. Price:

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

Please note that the forty-five (45) 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 is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Ann Finnegan of my staff at (732) 906-6177, should you have any questions regarding this matter.

Sincerely,

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.2
2008 FEB -5 AM 10:51
REGIONAL HEARING
CLERK

-----X
: In the Matter of :
: :
: CONSENT AGREEMENT :
: AND :
: FINAL ORDER :
: :
: Respondent. :
: :
: Docket No. :
: TSCA-02-2008-9209 :
: :
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act. :
: :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("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 (July 1, 2000) (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 Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), alleges that Respondent Consolidated Edison Company of New York, Inc. ("ConEd") 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 ConEd agree that settling this matter by entering into this Consent Agreement and Final Order (“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. During an October 24, 2007 telephone conversation and subsequent electronic mail messages, Respondent notified EPA that, on September 24, 2007, they had shipped one drum of PCB waste for disposal from Respondent’s site located at Boston Road and Eastchester Bridge, Bronx, New York without identifying it as PCB waste on EPA Manifest Form 8700-22.
3. By copy of a November 16, 2007 letter to the New York State Department of Environmental Conservation, Respondent notified EPA that, on October 17, 2007, they had shipped nine drums of PCB waste for disposal from Respondent’s site located at 64th Street and 7th Avenue, Brooklyn, New York without identifying it as PCB waste on EPA Manifest Form 8700-22.
4. On two occasions, Respondent failed to properly identify PCB waste submitted for off-site disposal on EPA Manifest Form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a). In each case, Respondent failed to specify the unique identifying number of each PCB Container, the identity of the PCB waste, and the earliest date of removal from service for disposal of the PCB waste.
5. Complainant sent to Respondent a “Notice of Opportunity Related to Enforcement Action Under the Toxic Substances Control Act”, which alleged the Respondent committed two violations of the regulations regarding polychlorinated biphenyls.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facilities which are the subject of this action, 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. 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), 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, 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 **Nine Thousand Nine Hundred Forty Dollars (\$ 9,940)**, payable 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 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
- 7) Docket Number

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

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

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address on or before 45 calendar days after 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 \$15.00 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. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations in the Complaint. 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 explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or the accompanying Final Order.

7. Respondent waives any right it may have pursuant to 40 C.F.R. 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

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 attorneys fees in this matter.

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: Randolph Price
Consolidated Edison Company of New
York, Inc.

NAME: RANDOLPH PRICE
(PLEASE PRINT)

TITLE: VP- EHS

DATE: January 4, 2008

COMPLAINANT:

[Signature]
Dere LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

PATRICK
DUNNE FOR DE

DATE: JANUARY 9, 2008

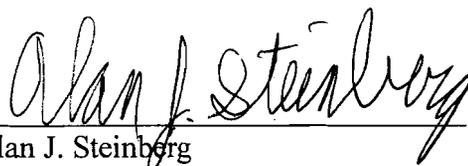
In the Matter of Consolidated Edison Company of New York, Inc.
Docket Number 2-TSCA-2008-9209

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-02-2008-9209. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, 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)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute and order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: _____

1-25-08



Alan J. Steinberg
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 2-TSCA-2008-9209

CERTIFICATE OF SERVICE

This is to certify that on the 31st day of *January* 2008, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2008-9209, by certified mail, return receipt requested, to:

Mr. Randolph Price, Vice President
Environmental Health & Safety
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, N.Y. 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.