



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 30 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sudha V. Raja, Esq.
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
P.O. Box 114
Trenton, New Jersey 08625-0114

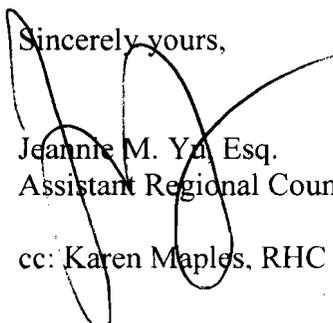
Re: New Jersey Department of Human Services
Docket Number No. TSCA-02-2007-9107

Dear Ms. Raja:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,


Jeannie M. Yeh, Esq.
Assistant Regional Counsel

cc: Karen Maples, RHC

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
MAR 31 11 00
REGIONAL HEARINGS
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
MARCH 31 11 06:00
REGIONAL HEARING
CLERK

-----x
In the Matter of :
New Jersey Department of Human :
Services, :
Respondent. :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----x

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. TSCA-02-2007-9107

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 Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, New Jersey Department of Human Services ("Respondent" or "NJDHS"), on March 30, 2007. The Complaint charged Respondent with violations of the regulations promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs"), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

FINDINGS OF FACT

1. Respondent is NJDHS.
2. Respondent owns, operates, and/or controls the facility in and around P.O. Box 7500, County Road 579, West Trenton, N.J. 08628 (hereinafter "Respondent's Facility").

3. On or about April 21, 2005, duly designated representatives of EPA conducted an inspection of and at Respondent's Facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter the "Inspection").
4. The Inspection was conducted for the purpose of determining Respondent's compliance with EPA regulations and requirements pertaining to PCBs and PCB Items, 40 C.F.R. Part 761.
5. As of the date of the Inspection, Respondent had not compiled and maintained annual document logs on the disposition of Respondent-owned PCBs and PCB Items for the years 2001 through 2003.
6. From December 28, 1998 to 2005, Respondent was using or storing the three PCB Transformers located in the Dix Building at the Facility.
7. From December 28, 1998 to 2005, Respondent used or stored the three PCB Transformers located in the Paton Building at its Facility.
8. From December 28, 1998 to 2005, Respondent was using or storing two PCB Transformers located in the Stratton Building at its Facility.
9. Each of the transformers described in paragraphs 6-8, above, constitutes a "PCB Transformer," and consequently is a "PCB Item," as those terms are defined at 40 C.F.R. § 761.3.
10. Respondent failed to register its PCB Transformers described in paragraphs 6-8, above, with EPA by December 28, 1998.
11. Respondent's continued use of its PCB Transformers after December 28, 1998 constitutes an unauthorized use of the PCB Transformers at its Facility.

STATEMENTS OF LAW

1. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.
2. Respondent has owned, used and maintained, or stored for reuse or disposal "PCBs" and "PCB Items", as those terms are defined at 40 C.F.R. § 761.3, at Respondent's Facility.
3. Respondent 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.
4. In the Complaint issued in this matter, EPA alleged the following violations:
 - a. Respondent's failures to compile and maintain annual document logs on Respondent-owned PCBs and PCB Items for the years 2001 through 2003 constitute failures or refusals to comply with 40 C.F.R. § 761.180(a), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
 - b. Respondent's unauthorized uses of the three PCB Transformers located in the Dix Building at the Facility after December 28, 1998, constitute failures or refusals to comply with 40 C.F.R. § 761.30(a)(1)(vi)(D), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
 - c. Respondent's unauthorized use of the three PCB Transformers located in the Paton Building at its Facility after December 28, 1998 constitute failures or refusals to comply with 40 C.F.R. § 761.30(a)(1)(vi)(D), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

- d. Respondent's unauthorized uses of the two PCB Transformers located in the Stratton Building at its Facility after December 28, 1998 constitute failures or refusals to comply with 40 C.F.R. § 761.30(a)(1)(vi)(D), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 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 of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, and accepted by Respondent without admission of fault or liability, 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 "Statements 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 "Statements of Law" section, above.
3. Respondent shall pay a civil penalty to EPA in the total amount of **TWENTY THOUSAND DOLLARS (\$20,000.00)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by

check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES* and shall bear thereon the Docket Number TSCA-02-2007-9107. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the date of signature by the Regional Administrator of the Final Order herein (the "due date").

If NJDHS chooses to make the payment by EFT, then it 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 Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: NEW JERSEY DEPARTMENT OF HUMAN SERVICES.
- 7) Case Number: TSCA-02-2007-9107.

Such EFT must be received on or before 45 calendar days after the signature by the Regional Administrator of the Final Order herein. Whether the payment is made by check or by EFT, NJDHS shall promptly thereafter furnish reasonable proof that such payment has been made to:

Jeannie M. Yu, Esq.

-6-

Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866,

Vivian Chin
Environmental Engineer
2890 Woodbridge Ave., MS-105
Edison, New Jersey 08837-3679,

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1631
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date on which the payment was to have been made.
 - d. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. Section 162(f).
4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
 5. Respondent agrees to complete the following transformer removal and/or replacement action (the "Removal Action"):
 - a. Within one (1) year of the date of signature of this order, Respondent will properly remove and dispose of the following three General Electric PCB Transformers located in the Dix building:
 - i. a transformer identified with serial number H292790P71A,
 - ii. a transformer identified with serial number H280139P7QA / H280139P70A, and
 - iii. a transformer identified with serial number H280135P7QA / H280135P70A.
 - b. Within one (1) year of the date of signature of this order, Respondent will properly remove and dispose of the following three General Electric PCB Transformers located in the Paton building:

- i. a transformer identified with serial number H280138P7QA / H280138P70A,
 - ii. a transformer missing the name plate bearing its identifying serial number (Respondent's facility identifies such transformer as #7019), and
 - iii. a transformer identified with serial number H280136P7QA / H280136P70A.
 - c. Within two (2) years of the date of signature of this order, Respondent will properly remove and dispose of the following two PCB Transformers located in the Stratton building:
 - i. a Westinghouse transformer, serial number YJR40541, and
 - ii. a General Electric transformer, serial number G-854267.
6. Respondent shall continue conducting monthly inspections of each of the transformers identified in Paragraph 5, and preparing written reports thereof, until NJDHS properly disposes of each such transformer.
 7. Pursuant to 40 C.F.R. § 761.180(a), Respondent shall continue to prepare and maintain an annual document log on the disposition of PCBs and PCB Items.
 8. Copies of the monthly inspection reports (Paragraph 6) and the annual document log (Paragraph 7) shall be submitted annually to Ms. Vivian Chin at the address cited in paragraph 3, above.

9. Every three months from the date of signature of this order until completion of the Removal Action, Respondent shall submit a Quarterly Progress Report to EPA in a manner mutually agreeable to both parties (e.g. email).
10. Within three hundred and sixty-five (365) calendar days after the date of signature of this order, NJDHS shall submit to EPA a written Milestone Report, which shall include at least: detailed descriptions of the removal and disposal of the transformers in the Dix, Patton and/or Stratton buildings; any documentation of the expenditures incurred as of the date of the Removal Action; disposal logs; and copies of the Certificates of Disposal and the manifests.
11. Respondent shall submit a Final Completion Report to EPA within 60 days from the date that the last PCB Transformer described in paragraph 5 is disposed of, or within 25 months of the date of signature of this order, whichever is earlier. This report shall contain at least the following information:
 - (i) a brief description of the removal, disposal and/or replacement as implemented;
 - (ii) itemized costs, documented by copies of purchase orders and receipts or canceled checks;
 - (iii) copies of all manifests, etc. describing transportation of the PCB Transformers and any related PCB waste to a TSCA approved facility for proper disposal; and
 - (iv) copies of all Certificates of Disposal describing the proper disposal of the PCB Transformers and any related PCB waste at a TSCA approved facility.
12. In all documents or reports Respondent submits to EPA pursuant to the terms and conditions of this Consent Agreement, Respondent shall, by a senior official, sign and

certify under penalty of perjury that the information contained in such document or report is true, accurate and correct by signing the following statement:

“I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and any 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 to the best of my knowledge and belief. I am aware that there are significant potential penalties for knowingly submitting materially false information.”

13. Respondent shall provide additional information (*i.e.*, information beyond that which is specifically called for under the terms of this Consent Agreement) supplementing the reports described in paragraphs 9-11 upon EPA's request.
14. EPA, Region 2, may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any of the Removal Action components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.
15. Nothing herein is meant to waive Respondent's responsibility to ensure that all PCBs and PCB Items are properly disposed of within one year of the date they are removed from service for disposal, as required under 40 C.F.R. Part 761.

16. Respondent agrees that failure to submit the Final Completion Report or any other report or notification required by paragraphs 9-11 above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 17, below.
17. a) In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the Removal Action described in paragraph 5, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- (i) If the Removal Action is not undertaken, Respondent shall pay a stipulated penalty to the United States of \$100,000.00.
 - (ii) If the Removal Action is not completed satisfactorily, but Respondent can document that it made good faith and timely efforts to undertake the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$10,000.00 for each PCB Transformer that was not removed and disposed within the time frame described herein.
 - (iii) For failure to submit the Final Completion Report and all supporting documentation required by paragraph 11, above, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after the report was originally due until the report is submitted.
 - (vii) For failure to submit any other report or notification required by paragraph 9 & 10, above, Respondent shall pay a stipulated penalty in the amount of \$50.00 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the Removal Action has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the Removal Action shall be in the sole discretion of EPA, which shall be exercised in a reasonable manner.

(c) Stipulated penalties 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.

(d) Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 3, above. Interest and late charges shall be paid as stated in paragraph 3.

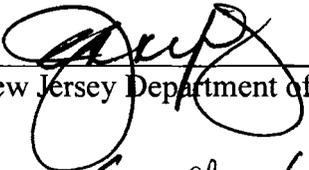
18. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation 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.

19. 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.

20. Respondent waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, or on this Consent Agreement or on the accompanying Final Order.

21. 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.
22. 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.
23. Each party shall bear its own costs and attorneys fees in this matter.
24. 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:

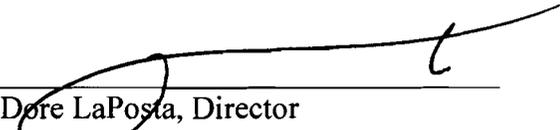
BY: 
New Jersey Department of Human Services

NAME: Jennifer Velez
(PLEASE PRINT)

TITLE: Commissioner

DATE: 3/3/09

COMPLAINANT:


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

DATE: MARCH 20, 2009

In the Matter of NJDHS Docket Number TSCA-02-2007-9107

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the Parties, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: March 27, 2009


GEORGE PAVLOU
Acting Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007

**In the Matter of New Jersey Department of Human Services
Docket Number TSCA-02-2007-9107**

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand:

Office of the Regional Hearing Clerk
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Sudha V. Raja
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
P.O. Box 114
Trenton, New Jersey 08625-0114

Dated: MAR 30 2009

Smidreel N. Baer
New York, New York