



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

APR 02 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Sarah J. Mugel  
Assistant Vice President and General Counsel  
National Fuel Gas Distribution Corporation  
6363 Main Street  
Williamsville, New York 14221-5887

Re: In the Matter of the National Fuel Gas Distribution Corporation  
Docket No. TSCA-02-2008-9204

Dear Ms. Mugel:

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.

We have received confirmation that payment of the civil penalty has been made. Please contact Vivian Chin of my staff at (732) 906-6179, should you have any questions regarding this matter.

Sincerely,

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

Enclosure

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 APR -3 PM 2:31  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 APR -3 PM 2:31  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
 : CONSENT AGREEMENT  
National Fuel Gas Distribution Corp., : AND  
 : FINAL ORDER  
Respondent. :  
 :  
 : Docket No.  
Proceeding under Section 16(a) of : TSCA-02-2008-9204  
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 National Fuel Gas Distribution Corporation violated Section 6(e) of the 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 National Fuel Gas Distribution Corporation 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 National Fuel Gas Distribution Corporation.
2. Respondent owns, operates, and/or controls natural gas pipeline in the western region of New York State (hereinafter "Respondent's pipeline").
3. On or about October 3, 2007, Respondent notified EPA of possible violations concerning the disposal of PCB-contaminated pipeline pursuant to EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618 (April 11, 2000).
4. On November 15, 2007, Respondent provided EPA with additional information concerning disposal of the PCB-contaminated pipeline.

5. As a result of the information, EPA determined that Respondent failed to dispose of PCB-contaminated pipeline in accordance with the specifications and requirements of 40 C.F.R. § 761.60(b)(5)(ii).

### CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the pipeline 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 PCB-contaminated pipeline at an unauthorized facility is a violation of 40 C.F.R. § 761.60(b)(5)(ii), 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. This Consent Agreement was negotiated and executed by the parties in good faith to avoid expensive and protracted litigation. 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 cashiers or certified check, a civil penalty in the amount of **Forty One Hundred Dollars (\$4,100)** 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:

Vivian Chin, Environmental Engineer

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, 16<sup>th</sup> Floor  
New York, NY 10007

Payment must be received at the above address (or account of EPA) 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 under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 761, that attach or might have attached as a result of the “Findings of Fact” section, above, and the

allegations contained in the "Conclusions of Law" section, above. 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 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 affect 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: *S. J. Mugel*  
National Fuel Gas Distribution Corp. *JGH ABC*

NAME: S. J. Mugel  
(PLEASE PRINT)

TITLE: Assistant Vice President  
and General Counsel

DATE: February 26, 2008

COMPLAINANT:

*Dore LaPosta* *7* *PATRICIA DURAN FOR 2*  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, NY 10007

DATE: MARCH 11, 2008

In the Matter of National Fuel Gas Distribution Corporation  
Docket Number TSCA-02-2008-9204

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 National Fuel Gas Distribution Corporation, bearing Docket Number TSCA-02-2008-9204. 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 an 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: 3-28-08



ALAN J. STEINBERG  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

In the Matter of National Fuel Gas Distribution Corporation  
Docket No. TSCA-02-2008-9204

CERTIFICATE OF SERVICE

This is to certify that on the 2<sup>nd</sup> day of April 2008, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2008-9204, by certified mail, return receipt requested, to:

Sarah J. Mugel  
Assistant Vice President and General Counsel  
National Fuel Gas Distribution Corporation  
6363 Main Street  
Williamsville, New York 14221-5887

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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