

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

October 27, 2021 @ 8:57 am

USEPA – Region II

Regional Hearing Clerk

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 In the Matter of :
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 :
 Consolidated Edison Company :
 of New York, Inc., :
 :
 Respondent. :
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
 TSCA-02-2022-9204

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 Enforcement and Compliance Assurance Division, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), alleges that Consolidated Edison Company of New York, Inc. ("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 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. Respondent operates and/or controls the facility known as the Astoria Transformer Shop (hereinafter "Respondent's Astoria facility"), located in and around 31-01 20th Avenue, Long Island City, New York.
3. By electronic mail dated May 6, 2021, Respondent disclosed to EPA that, on April 8, 2021, they shipped approximately 4,450 pounds of regulated PCB waste from Respondent's Astoria facility for off-site disposal without identifying it as PCB on EPA Manifest Form 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
4. By electronic mail dated May 6, 2021, Respondent disclosed to EPA that approximately 4,450 pounds of PCB remediation waste from Respondent's Astoria facility was disposed in a manner not authorized under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii).
5. On August 17, 2021 the parties met for an informal virtual video conference which included a settlement discussion.

CONCLUSIONS OF LAW

1. 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.
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) and 2614(1)(C).
4. Disposal of PCB remediation waste in a manner not authorized under 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii) 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).
5. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) for the violations described in paragraphs 3 and 4, above.

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 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 check, certified check, electronically via Fedwire or on-line, a civil penalty in the amount of **FORTY THOUSAND NINE HUNDRED DOLLARS (\$40,900)** to the "Treasurer of the United States of America".

If Respondent chooses to pay by check, each check shall be identified with a notation of the name of Respondent and the 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

If Respondent chooses to pay 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.

If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” open the form and complete the required fields.

Payment must be received at the above address (or in 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”). Once payment has been made, Respondent shall provide proof of payment to the EPA staff member listed in paragraph 12, below.

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 violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. 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. Respondent certifies that as of the date of its execution of this Consent Agreement, it is in compliance with all relevant requirements of TSCA at Respondent’s Astoria facility.

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

12. Except as the parties may otherwise agree in writing, all documentation and information required to be submitted to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to:

Ann Finnegan, TSCA Enforcement Coordinator
U.S. Environmental Protection Agency – Region 2
Pesticides and Toxic Substances Compliance Branch
2890 Woodbridge Avenue, MS-225
Edison, NJ 08837
finnegan.ann@epa.gov

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

Venetia Lannon, Vice President
Environment Health & Safety
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003-3598
lannonv@coned.com

In cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to Respondent.

14. Complainant shall provide to Respondent a copy of the fully executed CAFO. Respondent consents to service of this CAFO by electronic mail and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.

15. EPA and Respondent agree that the parties may use electronic signatures for this matter.

RESPONDENT:

BY: _____
Consolidated Edison Company of
New York, Inc.

NAME: _____
(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT:

For DORE LAPOSTA, Director
Enforcement and Compliance Assurance
Division
U.S. Environmental Protection Agency –
Region 2
290 Broadway
New York, NY 10007

DATE: _____

In the Matter of Consolidated Edison Company of New York, Inc.
Docket Number TSCA-02-2022-9204

FINAL ORDER

The Acting 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-02-2022-9204. 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: _____

Walter Mugdan
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-02-2022-9204

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

By E-mail:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866
maples.karen@epa.gov

By E-mail:

Venetia Lannon, Vice President
Environment Health & Safety
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003-3598
lannonv@coned.com

Signed:

Ann Finnegan
Pesticides and Toxic Substances Compliance Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-225)
Edison, New Jersey 08837-3679