



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVE.
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2007 MAR 29 AM 10:34

REGIONAL HEARING
CLERK

MAR 28 2007

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Elaine Simpson
Vice President, Health, Safety & Environment
PQ Corporation
1200 West Swedesford Road
Berwyn, PA 19312

Re: In the Matter of PQ Corporation
Docket No. TSCA-02-2007-9101

Dear Ms. Simpson:

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,

A handwritten signature in black ink, appearing to read "Kenneth S. Stoller".

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

Enclosure

original

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 MAR 29 AM 10:34
REGIONAL HEARING
CLERK

-----X
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In the Matter of :
:
PQ Corporation, :
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. TSCA-02-2007-9101

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, PQ Corporation ("Respondent"), on October 13, 2006.

The Complaint charged Respondent with two violations of 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).

FINDINGS OF FACT

1. Respondent is PQ Corporation.
2. Respondent owns, operates, and/or controls the facility in and around 2 Paddock Street, Avenel, New Jersey (hereinafter "Respondent's facility").
3. On or about March 16, 2006, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility (hereinafter "the inspection").
4. As a result of the inspection, EPA determined that Respondent had failed to identify PCB waste on EPA Manifest 8700-22 in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a).
5. As a result of the inspection, EPA determined that Respondent had used PCBs over 50 ppm in paint, which is not an authorized use under 40 C.F.R. § 761.30.
6. On November 27, 2006, the parties met for an informal settlement conference. During this settlement conference, Respondent provided information to EPA documenting an additional violation of the PCB manifesting rules which occurred subsequent to issuance of the Complaint. The violation occurred when material shipped on November 7, 2006 as non-TSCA waste under Manifest 001033485JJK was found to contain PCBs.
7. Respondent asserts that this additional violation was the result of actions taken by Cycle Chem, Inc. (hereinafter "Cycle Chem"), who was paid to perform sampling and analysis of wastes discovered during the closure of an old building at Respondent's facility, and to transport and dispose of the waste material from the building. Respondent further asserts that Cycle Chem prepared the shipping papers that resulted in the violation.

8. EPA and Respondent agree that the violation disclosed to EPA subsequent to the issuance of the Complaint would be included in this Consent Agreement. The parties 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 violation without further litigation.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of the above referenced Complaint, 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).

4. Use of PCBs over 50 ppm in paint is a violation of 40 C.F.R. § 761.30, which is a violation 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 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "Consolidated Rules"), it is

hereby agreed by and between the parties hereto, and accepted by Respondent without admission of fault, 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 Complaint and in the "Conclusions of Law" section above; (b) neither admits nor denies the specific factual allegations contained in the Complaint and in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the Complaint and in the "Conclusions of Law" section, above.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Ten Thousand Nine Hundred Twenty Five Dollars (\$ 10,925.00)** 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:

EPA Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Respondent shall also send copies of this payment to each of the following:

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:

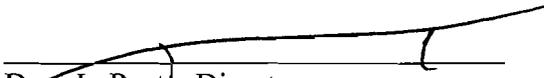
BY: 
PQ Corporation

NAME: JOSEPH L. DOTSON, IV
(PLEASE PRINT)

TITLE: DIRECTOR OF OPERATIONS

DATE: MARCH 5, 2007

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 15, 2007

In the Matter of PQ Corporation
Docket No. TSCA-02-2007-9101

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 in full settlement of EPA's Complaint bearing Docket No. TSCA-02-2007-9101, issued in the matter of PQ Corporation, 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: 3/26/07

Kathleen Callahan

for Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007

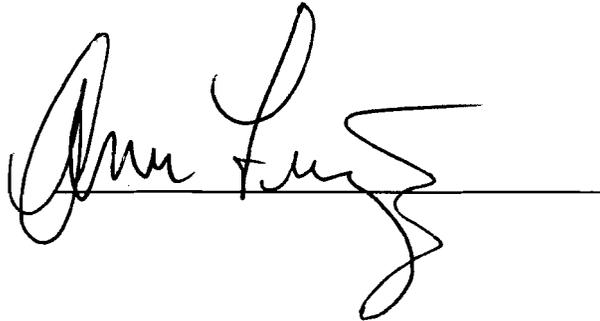
In the Matter of PQ Corporation
Docket Number TSCA-02-2007-9101

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of March 2007, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2005-9207, by certified mail, return receipt requested, to:

Elaine Simpson
Vice President, Health, Safety & Environment
PQ Corporation
1200 West Swedesford Road
Berwyn, PA 19312

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.

A handwritten signature in black ink, appearing to read "Ann Long", is written over a horizontal line. The signature is cursive and stylized.