



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Heidi Rubenstein, Esq.
Senior Counsel
New York City Law Department
100 Church Street
New York, New York 10007-2601

Jill Braverman, Esq.
Assistant General Counsel
New York City Economic Development Corporation
110 William Street
New York, New York 10038

REGIONAL HEARING
CLERK

2014 APR 10 PM 3:55

U.S. Environmental
Protection Agency-Reg 2

Re: In the Matter of the City of New York and New York City Economic
Development Corporation, Docket Number TSCA-02-2009-9204

Dear Ms. Rubenstein and Ms. Braverman:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator (or her delegate) of the U.S. Environmental Protection Agency, Region 2. The original of this document will be filed with the Regional Hearing Clerk of EPA, Region 2.

Please note that payment is due within forty-five (45) days of effective date of this Consent Agreement and Final Order. Please arrange for payment of this penalty according to the instructions given in that Order.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3205.

Sincerely,

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

bcc:

John Martin, Public Affairs Div.-Public Outreach Branch

John Gorman, 2PTSB

Susan Schulz, 2PTSB

Vivian Chin, 2PTSB

William Sawyer, 2ORC-WTS

Jeannie Yu, 2ORC-WTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 APR 10 PM 3:55
REGIONAL HEARING
CLERK

----- X
In the Matter of :
 :
The City of New York : CONSENT AGREEMENT
and : AND
The New York City Economic Development Corporation, : FINAL ORDER
 : Docket No. TSCA-02-2009-9204
Respondents. :
 :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
----- X

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, et seq.

On September 30, 2009, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondents, the City of New York (the "City") and New York City Department of Economic Development Corporation ("NYCEDC"). The Complaint charged Respondents 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).

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are the City and NYCEDC.
2. NYCEDC's offices are located in or about 110 William Street, Floor 6, New York, New York 10038.
3. NYCEDC, on behalf of, and pursuant to a contract with the City, operates, maintains, and/or controls the facility in and around the Arthur Kill Railroad Lift Bridge between Elizabeth, New Jersey and Staten Island, New York (hereinafter the "Facility").
4. From about 1994, NYCEDC, on behalf of, and pursuant to a contract with the City, has operated, maintained, and/or controlled the facility.
5. The City is a municipality existing under the laws of the State of New York.
6. From about 1994, the City has owned the Facility.
7. The Facility, until September 2011, had one PCB Transformer (the "Transformer") located in the upper level of the West Tower Mechanical Room.
8. The Transformer was a Westinghouse 500 KVA, 60 cycle transformer containing 309 gallons of dielectric fluid.
9. The Transformer was a trade name PCB transformer.
10. In February 2007, NYCEDC's consultant provided laboratory data indicating that the oil in the Transformer contained PCBs at a concentration of 36,000 milligrams per kilogram.
11. On or about February 2007, NYCEDC's consultant discovered that the Transformer was leaking.

12. PCB oil dripped from the containment structure underneath the leaking transformer onto the electrical equipment and concrete surfaces located below such structure.
13. The Transformer was registered with EPA on May 25, 2007.
14. On July 10, 2008, NYCEDC submitted a Self-Implementing Cleanup Plan (the "SIP") to EPA, Region 2.
15. The SIP specifically addressed the historic releases from the Transformer.
16. Respondents replaced the PCB transformer at the Facility with a non-PCB Transformer in September 2011.
17. Each Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.
18. Respondents have 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 Respondents' Facility.
19. Respondents are 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.
20. In the Complaint issued in this matter, EPA alleged the following violations:
 - a. Respondents' unauthorized use of the PCB Transformer located in the West Tower Mechanical Room at Respondents' facility after December 28, 1998, constitutes a failure or refusal to comply with 40 C.F.R. § 761.30(a)(1)(vi)(D), which is a violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).
 - b. Respondents' disposal of PCB liquids in a manner not authorized by 40 C.F.R. § 761.60(a) constitutes a failure or refusal to comply with 40 C.F.R. §

761.60(a), 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, it is hereby agreed by and between the parties hereto, and accepted by Respondents without admission of fault or liability, that Respondents voluntarily and knowingly agree to, and shall, comply with the following terms:

1. Respondents shall hereinafter comply, at the Facility, with all applicable provisions of TSCA relating to PCBs and the regulations promulgated pursuant to it, codified at 40 C.F.R. Part 761.
2. For the purposes of this Consent Agreement, Respondents (a) admit 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 issued in this matter; (b) neither admit nor deny the specific factual determinations contained in the "Findings of Fact and Conclusions of Law" section, above; and (c) neither admit nor deny the conclusions set forth in the "Findings of Fact and Conclusions of Law" section, above.
3. Respondents shall pay a civil penalty to EPA in the total amount of **TWENTY-FOUR THOUSAND, TWO HUNDRED AND SEVENTY-FIVE DOLLARS (\$24,275.00)**. 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 THE CITY OF NEW YORK AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION* and shall bear hereon the Docket Number TSCA-02-2009-9204. 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 the City and NYCEDC choose to make the payment by EFT, then they 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) Names of Respondents: THE CITY OF NEW YORK AND NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION.
- 7) Case Number: TSCA-02-2009-9204.

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, the City and NYCEDC shall promptly thereafter furnish reasonable proof that such payment has been made to:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
U. S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
U. S. 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 effective date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.
4. Except as provided in Paragraph 3, above, in this section (and except as the parties may otherwise in writing agree), all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Vivian Chin
Environmental Engineer
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
2890 Woodbridge Avenue
Edison, New Jersey 08837

and

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, Room 1635
16th Floor
New York, New York 10007

5. On September 9, 2011, Respondents began conducting a Supplemental Environmental Project ("SEP") in which the Respondents properly removed and disposed of their existing PCB transformer described in paragraphs 7-9 of the "Findings of Fact and Conclusions of Law" section, above. Removal of the PCB transformer was completed at the end of September 2011. Respondents documented

creditable SEP expenditures of thirty-seven thousand and ninety-five dollars (\$37,095).

6. In order to fully document completion of the SEP, Respondents shall submit a Final Completion Report to EPA within 90 days from the effective date of the Final Order.

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 Transformer 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 Transformer and any related PCB waste at a TSCA approved facility.
7. This Consent Agreement is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste or toxic substances or other materials nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
8. Nothing herein is meant to waive Respondents' responsibility to ensure that all PCBs and PCB Items are properly disposed as required under 40 C.F.R. Part 761.60.
9. Respondents agree that failure to submit the Final Completion Report above shall be deemed a violation of this Consent Agreement, and Respondents shall become liable for stipulated penalties pursuant to paragraph 10, below.

10. (a) For failure to submit the Final Completion Report and all supporting documentation required by paragraph 6, above, Respondents 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.
- (b) 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.
- (c) Respondents shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. 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 herein.

11. In all documents or reports Respondents submit to EPA pursuant to the terms and conditions of this Consent Agreement, Respondents 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.”

12. 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 submittal of the Final Completion Report, and upon the accuracy of Respondents’ 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.

13. Respondents have read this Consent Agreement, understand its terms, and consent to the issuance of the Final Order accompanying this Consent Agreement, consent to making full payment of the civil penalty in accordance with the terms and conditions set forth in this Consent Agreement, consent to the stipulated penalties set forth in this Consent Agreement, and consent to submit a Final Completion Report in accordance with the terms of this Consent Agreement.
14. Respondents waive their 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.
15. Respondents waive any right they 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, the Deputy Regional Administrator or the Regional Judicial Officer 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.
16. 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.


17. Each party shall bear its own costs and attorneys fees in this matter.
18. Respondents consent to service upon Respondents of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of the City of New York and New York City Economic Development Corporation,
Docket Number TSCA-02-2009-9204

RESPONDENTS:

CITY OF NEW YORK

BY:



Authorizing Signature

Andrew Schwartz

NAME:

First Deputy Commissioner
(PLEASE PRINT)

TITLE:

First Deputy Commissioner

DATE:

2/28/14

In the Matter of the City of New York and New York City Economic Development Corporation,
Docket Number TSCA-02-2009-9204

**NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION**

BY: 

Authorizing Signature

NAME: JOHN CICERELLO
(PLEASE PRINT)

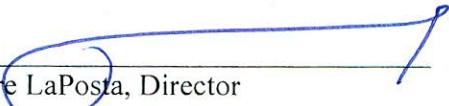
TITLE: EXECUTIVE VICE PRESIDENT

DATE: 2/27/14

In the Matter of the City of New York and New York City Economic Development Corporation,
Docket Number TSCA-02-2009-9204

COMPLAINANT:

**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION 2**



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

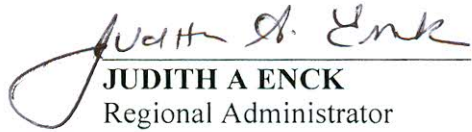
DATE: March 27, 2014

In the Matter of the City of New York and New York City Economic Development Corporation,
Docket Number TSCA-02-2009-9204

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 pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. 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: 4-7-14


JUDITH A ENCK
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007