

"Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), and EPA's April 9, 1990, "PCB Penalty Policy", EPA has assessed a penalty of \$61,900 for these violations.

On January 21, 2008, Quebecor World (USA) Inc. and certain of its subsidiaries, including Respondent, filed with the United States Bankruptcy Court for the Southern District of New York voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. These petitions have been consolidated for procedural purposes and are being administrated jointly as Case No. 08-10152 (the "Bankruptcy Case").

On January 22, 2009, the United States, on behalf of EPA, filed Proof of Claim #9176 in the Bankruptcy Case (the "EPA Buffalo Penalty Claim"), alleging a general unsecured claim against Respondent for civil penalties resulting from the violations alleged in this Consent Agreement, and stating that the United States intended to file an administrative expense claim with respect to these penalties. The United States' Proof of Claim states:

This Proof of Claim is filed in a protective manner. The United States believes that the penalties set forth below should be treated as administrative expenses, as they occurred post-petition. The United States intends to file an administrative expense claim with respect to these penalties before the bar date for the filing of administrative expense claims. The United States is including these penalties in its proof of claim, as a general unsecured claim, only in a protective manner in case the Court ultimately determines that the United States is not entitled to administrative expense priority with respect to these penalty claims. Furthermore, as discussed in Paragraph 44 below, Debtor's obligation to comply with the TSCA regulations and to correct the violations set forth below is not a claim under 11 U.S.C. § 101(5). The Debtor must comply with these regulations.

The deadline for the filing of Administrative Expense Claims in the Bankruptcy Court was September 21, 2009. However, EPA and the Respondent entered into a stipulation extending that deadline to December 21, 2009, with respect to the filing by EPA of an administrative

expense claim on the EPA Buffalo Penalty Claim, which Stipulation was approved by the Bankruptcy Court on October 13, 2009.

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 Quebecor World Buffalo, Inc.
2. Respondent owns, operates, and/or controls the facility in and around 2475 George Urban Boulevard, Depew, New York 14043 (hereinafter "Respondent's facility").
3. On or about October 22, 2008, 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, in two separate locations, failed to mark the means of access to Respondent's PCB Transformers in accordance with the specifications and requirements of 40 C.F.R. § 761.40(j).
5. As a result of the inspection, EPA determined that Respondent had, in two separate locations, not removed stored combustible materials within a PCB Transformer enclosure in accordance with the specifications and requirements of 40 C.F.R. § 761.30(a).
6. As a result of the inspection, EPA determined that, through the occurrence of leaks from two of Respondent's PCB Transformers, Respondent had disposed of PCBs in a manner not authorized by 40 C.F.R. § 761.60(a).

CONCLUSIONS OF LAW

7. Respondent, as the owner and/or operator of the facility 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.

8. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

9. Failure to mark the access to PCB Transformers is a violation of 40 C.F.R. § 761.40(j), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

10. Storage of combustibles in a PCB Transformer enclosure is a violation of 40 C.F.R. § 761.30(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).

11. Unauthorized disposal of PCBs 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), 2614(1)(C).

TERMS OF CONSENT AGREEMENT

12. 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:

13. The provisions of this Consent Agreement shall apply to and be binding on Respondent, its officers, directors, successors, and assigns.

14. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

15. 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.

16. After consideration of the nature of the violations alleged in this Consent Agreement and other relevant factors, EPA has determined that it is fair and proper that Respondent pays a civil penalty in the amount of **Thirteen Thousand Nine Hundred Twenty Eight Dollars (\$13,928)** in settlement of this matter.

17. In addition to the above civil penalty, Respondent agrees to undertake the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protection and improvements: Within six (6) months of the date this Agreement is signed by the Regional Administrator, Respondent shall complete a project to undertake no less than one retrofill of each of the 2 PCB Transformers that are currently in use at the CIC substation at Respondent's facility. A single retrofill episode will include the removal of all free-flowing dielectric fluid from a PCB Transformer and its subsequent replacement with non-PCB fluid. The PCB fluid removed from these transformers will be labeled, stored, manifested, transported, and disposed of in accordance with the regulations at 40 C.F.R. Part 761 (the PCB regulations). Disposal of the PCB waste from this retrofill shall be arranged immediately upon completion of the retrofill.

18. The total expenditure for allowable costs of the SEP shall be not less than \$43,145.00, in accordance with the cost estimate provided by Respondent. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP in the SEP Completion Report described in paragraph 20 of this section.

19. Nothing herein is meant to waive Respondent's responsibility to ensure that all PCBs and PCB Items are disposed of within one year of the date they are removed from service for disposal, as required under 40 C.F.R. Part 761.

20. Respondent shall submit an SEP Completion Report to EPA within 60 days of the date that the second PCB Transformer is retrofilled, or within 18 months of the date that the Regional Administrator signs the Final Order at the end of this Agreement, whichever is earlier. The SEP Completion Report shall contain at least the following information:

- (a) a detailed narrative description of the SEP as implemented;
- (b) itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (c) copies of all manifests, etc. documenting transportation of any and all related PCB waste to a TSCA approved facility for proper disposal; and
- (d) copies of all Certificates of Disposal describing the proper disposal of any and all related PCB waste at a TSCA approved facility.

21. 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 SEP described in paragraph 17, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 18, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(a) If the SEP is not undertaken, Respondent shall pay a stipulated penalty to the United States of \$43,145.00.

(b) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(c) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in an amount equal to the difference between the dollars projected to be spent (\$43,145.00) and the dollars actually spent.

(d) If the SEP is not completed satisfactorily, but Respondent: i) made good faith and timely efforts to complete the project; and ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(e) For failure to submit the SEP Completion Report and all supporting documentation required by paragraph 20, 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.

(f) The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be in the sole discretion of EPA.

(g) 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.

(h) Respondent 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 25 below. Interest and late charges shall be paid as stated in paragraph 25, below.

22. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with an enforcement action taken by the U.S. Environmental Protection Agency for violations of 40 C.F.R. Part 761."

23. On July 2, 2009, the United States Bankruptcy Court for the Southern District of New York issued an order confirming the Third Amended Joint Plan of Reorganization of Quebecor World (USA) Inc. and Certain Affiliated Debtors and Debtors-in-Possession, dated July 1, 2009, as modified (the "Plan"). On July 21, 2009, the Effective Date of the Plan, as defined therein, occurred. EPA and Respondent agree that the civil penalties sought in the EPA Buffalo Penalty Claim are administrative expenses, and that this Consent Agreement settles an EPA Administrative Claim pursuant to Article 9.6 of the Plan. Within ten days of EPA's signature of the Final Order, Respondent shall submit this CAFO to the Joint Claims Oversight Committee. This CAFO shall become effective thirty days after Respondent submits this CAFO to the Joint Claims Oversight Committee, unless the Joint Claims Oversight Committee objects to this CAFO within such thirty day period. If the Joint Claims Oversight Committee submits a timely objection to this CAFO, the Bankruptcy Court shall determine the allowed amount of EPA's Administrative Claim, in accordance with Article 9.6 of the Plan and as otherwise ordered by the Bankruptcy Court.

24. The EPA Buffalo Penalty Claim shall be deemed expunged; provided, however, EPA shall have an Allowed Administrative Claim in the amount of \$13,928 (the "Allowed Claim") and Respondent shall perform the SEP as set forth herein.

25. Any cash distribution of the Allowed Claim shall be made by submitting a bank, cashiers, or certified check, payable to the order of 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

Payment must be received at the above address (or account of EPA) on or before 60 calendar days after the date of the signature by the Regional Administrator 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"), provided, however, if the Joint Claims Oversight Committee objects to the CAFO, the Bankruptcy Court shall determine both the allowed amount of EPA's Administrative Claim and time of payment on such claim 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:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Ann Finnegan, Life Scientist
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions may 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.

26. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under TSCA, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder at 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.

27. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and, subject to the provisions of Paragraph 23, agrees to pay the penalty in accordance with the terms of this Consent Agreement.

28. 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.

29. 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, 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.

30. 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.

31. 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.

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

33. This Consent Agreement shall be without prejudice to the rights of EPA with respect to any other timely filed proofs of claims filed in the Bankruptcy Case for liabilities other than those liabilities resolved by this Consent Agreement.

34. 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: David M. Smith

NAME: DAVID M. SMITH
(PLEASE PRINT)

TITLE: VP / GM

DATE: 12/17/09

COMPLAINANT:

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

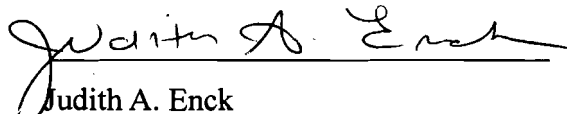
DATE: 12/28/09

In the Matter of Quebecor World Buffalo Inc.
Docket Number TSCA-02-2010-9209

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 Quebecor World Buffalo Inc., bearing Docket Number TSCA-02-2010-9209. 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 as set forth in the Consent Agreement. 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 ("TSCA"), 15 U.S.C. § 2605, for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: 12/29/09



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

**In the Matter of Quebecor World Buffalo, Inc., TSCA-02-2010-9209
Consent Agreement and Final Order**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2

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REGIONAL HEARING
CLERK

CERTIFICATE OF SERVICE

I certify that I have this day sent the foregoing fully executed Consent Agreement and Final order ("CAFO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below.

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U. S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Duplicate Original and Copy
By Overnight Mail:

Donald Frankel, Esq.
U. S. Department of Justice
Environmental & Natural Resources Division
1 Gateway Center
Suite 616
Newton, Mass. 02458

Copy By Overnight Mail:

Mr. David M. Smith
Vice-President & General Manager
Worldcolor Buffalo
2475 George Urban Boulevard
Depew, New York 14043

Dated: December 30, 2009

